

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 July 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 September 1, 2023, was 29,194,640.

BIG LOTS, INC.
FORM 10-Q
FOR THE FISCAL QUARTER ENDED JULY 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		Twenty-six Weeks Ended	
	July 29, 2023	July 30, 2022	July 29, 2023	July 30, 2022
Net sales	\$ 1,139,361	\$ 1,346,221	\$ 2,262,938	\$ 2,720,935
Cost of sales (exclusive of depreciation expense shown separately below)	763,477	907,673	1,494,585	1,777,793
Gross margin	375,884	438,548	768,353	943,142
Selling and administrative expenses	456,689	510,444	1,073,755	991,223
Depreciation expense	41,282	37,197	77,864	74,553
Operating loss	(122,087)	(109,093)	(383,266)	(122,634)
Interest expense	(11,175)	(3,904)	(20,324)	(6,654)
Other income (expense)	—	257	5	1,297
Loss before income taxes	(133,262)	(112,740)	(403,585)	(127,991)
Income tax expense (benefit)	116,575	(28,590)	52,325	(32,759)
Net loss and comprehensive loss	\$ (249,837)	\$ (84,150)	\$ (455,910)	\$ (95,232)
Earnings (loss) per common share				
Basic	\$ (8.56)	\$ (2.91)	\$ (15.67)	\$ (3.31)
Diluted	\$ (8.56)	\$ (2.91)	\$ (15.67)	\$ (3.31)
Weighted-average common shares outstanding				
Basic	29,175	28,919	29,096	28,770
Dilutive effect of share-based awards	—	—	—	—
Diluted	29,175	28,919	29,096	28,770
Cash dividends declared per common share				
	\$ —	\$ 0.30	\$ 0.30	\$ 0.60

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)

	July 29, 2023	January 28, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 46,034	\$ 44,730
Inventories	983,225	1,147,949
Other current assets	99,902	92,635
Total current assets	1,129,161	1,285,314
Operating lease right-of-use assets	1,490,076	1,619,756
Property and equipment - net	721,896	691,111
Deferred income taxes	—	56,301
Other assets	38,555	38,449
Total assets	\$ 3,379,688	\$ 3,690,931
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 338,473	\$ 421,680
Current operating lease liabilities	240,076	252,320
Property, payroll, and other taxes	72,352	71,274
Accrued operating expenses	123,454	111,752
Insurance reserves	35,707	35,871
Accrued salaries and wages	28,135	26,112
Income taxes payable	598	845
Total current liabilities	838,795	919,854
Long-term debt	493,200	301,400
Noncurrent operating lease liabilities	1,453,961	1,514,009
Deferred income taxes	485	—
Insurance reserves	57,845	58,613
Unrecognized tax benefits	8,456	8,091
Other liabilities	220,917	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 29,192 shares and 28,959 shares, respectively	1,175	1,175
Treasury shares - 88,303 shares and 88,536 shares, respectively, at cost	(3,093,779)	(3,105,175)
Additional paid-in capital	623,347	627,714
Retained earnings	2,775,286	3,240,193
Total shareholders' equity	306,029	763,907
Total liabilities and shareholders' equity	\$ 3,379,688	\$ 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 July 30, 2022							
Balance - April 30, 2022	28,893	\$ 1,175	88,602	\$ (3,107,806)	\$ 619,754	\$ 3,467,205	\$ 980,328
Comprehensive loss	—	—	—	—	—	(84,150)	(84,150)
Dividends declared (\$0.30 per share)	—	—	—	—	—	(9,068)	(9,068)
Purchases of common shares	(9)	—	9	(241)	—	—	(241)
Restricted shares vested	48	—	(48)	1,687	(1,687)	—	—
Performance shares vested	—	—	—	—	—	—	—
Share-based compensation expense	—	—	—	—	3,858	—	3,858
Balance - July 30, 2022	28,932	\$ 1,175	88,563	\$ (3,106,360)	\$ 621,925	\$ 3,373,987	\$ 890,727
Twenty-Six Weeks Ended July 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	—	—	—	—	—	(95,232)	(95,232)
Dividends declared (\$0.60 per share)	—	—	—	—	—	(18,049)	(18,049)
Purchases of common shares	(289)	—	289	(10,880)	—	—	(10,880)
Restricted shares vested	404	—	(404)	14,170	(14,170)	—	—
Performance shares vested	341	—	(341)	11,952	(11,952)	—	—
Share-based compensation expense	—	—	—	—	7,525	—	7,525
Balance - July 30, 2022	28,932	\$ 1,175	88,563	\$ (3,106,360)	\$ 621,925	\$ 3,373,987	\$ 890,727
Thirteen Weeks Ended July 29, 2023							
Balance - April 29, 2023	29,139	\$ 1,175	88,356	\$ (3,095,791)	\$ 620,971	\$ 3,025,004	\$ 551,359
Comprehensive loss	—	—	—	—	—	(249,837)	(249,837)
Dividends declared (\$0.00 per share)	—	—	—	—	—	119	119
Purchases of common shares	(6)	—	6	(49)	—	—	(49)
Restricted shares vested	59	—	(59)	2,061	(2,061)	—	—
Share-based compensation expense	—	—	—	—	4,437	—	4,437
Balance - July 29, 2023	29,192	\$ 1,175	88,303	\$ (3,093,779)	\$ 623,347	\$ 2,775,286	\$ 306,029
Twenty-Six Weeks Ended July 29, 2023							
Balance - January 28, 2023	28,959	\$ 1,175	88,536	\$ (3,105,175)	\$ 627,714	\$ 3,240,193	\$ 763,907
Comprehensive loss	—	—	—	—	—	(455,910)	(455,910)
Dividends declared (\$0.30 per share)	—	—	—	—	—	(8,997)	(8,997)
Purchases of common shares	(134)	—	134	(1,466)	—	—	(1,466)
Restricted shares vested	367	—	(367)	12,862	(12,862)	—	—
Share-based compensation expense	—	—	—	—	8,495	—	8,495
Balance - July 29, 2023	29,192	\$ 1,175	88,303	\$ (3,093,779)	\$ 623,347	\$ 2,775,286	\$ 306,029

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)

	Twenty-six Weeks Ended	
	July 29, 2023	July 30, 2022
Operating activities:		
Net loss	\$ (455,910)	\$ (95,232)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	79,216	75,152
Non-cash lease expense	178,890	137,618
Deferred income taxes	56,787	(31,432)
Non-cash impairment charge	84,389	24,328
Gain on disposition of property and equipment	(6,144)	(1,531)
Non-cash share-based compensation expense	8,495	7,525
Unrealized gain on fuel derivatives	—	(257)
Change in assets and liabilities:		
Inventories	164,724	78,789
Accounts payable	(83,207)	(183,800)
Operating lease liabilities	(183,638)	(129,436)
Current income taxes	1,005	10,982
Other current assets	42	(4,330)
Other current liabilities	8,021	(19,133)
Other assets	(1,953)	348
Other liabilities	(1,328)	(5,000)
Net cash used in operating activities	(150,611)	(135,409)
Investing activities:		
Capital expenditures	(29,998)	(89,372)
Cash proceeds from sale of property and equipment	9,630	2,509
Other	(10)	(9)
Net cash used in investing activities	(20,378)	(86,872)
Financing activities:		
Net proceeds from long-term debt	191,800	249,100
Net repayments of sale and leaseback financing	(1,517)	—
Payment of finance lease obligations	(1,356)	(967)
Dividends paid	(9,740)	(19,496)
Payments for other financing liabilities	(5,428)	—
Payment for treasury shares acquired	(1,466)	(10,880)
Payment for debt issuance cost	—	(54)
Net cash provided by financing activities	172,293	217,703
Increase (decrease) in cash and cash equivalents	1,304	(4,578)
Cash and cash equivalents:		
Beginning of period	44,730	53,722
End of period	\$ 46,034	\$ 49,144

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

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

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

All references in this report to “we,” “us,” or “our” are to Big Lots, Inc. and its subsidiaries. We are a home discount retailer in the United States (“U.S.”). At July 29, 2023, we operated 1,422 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) 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 July 29, 2023 (“second quarter of 2023”) and July 30, 2022 (“second quarter of 2022”) were both comprised of 13 weeks. The year-to-date periods ended July 29, 2023 (“year-to-date 2023”) and July 30, 2022 (“year-to-date 2022”) were both comprised of 26 weeks.

Long-Lived Assets

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.

In the year-to-date 2023, the Company recorded aggregate asset impairment charges of \$82.9 million related to 237 underperforming store locations, which were comprised of \$62.1 million of operating lease right-of-use assets and \$22.3 million of property and equipment - net, and partially offset by gains on extinguishment of lease liabilities from lease cancellations from previously impaired stores of \$1.5 million. In the year-to-date 2022, the Company recorded aggregate asset impairment charges of \$24.1 million related to 56 underperforming store locations, which were comprised of \$17.5 million of operating lease right-of-use assets and \$6.6 million of property and equipment - net. The impairment charges for 2022 and 2023 were recorded in selling and administrative expenses in our accompanying consolidated statements of operations and comprehensive loss.

In the year-to-date 2023, the Company completed the sale of two owned store locations that were classified as held for sale at the end of fiscal 2022 with an aggregate net book value of \$2.2 million. The net cash proceeds on the sale of real estate were \$9.3 million and resulted in a gain after related expenses of \$7.1 million. The gain on the sales of real estate after related expenses were recorded in selling and administrative expenses in our accompanying consolidated statements of operations and comprehensive loss.

Selling and Administrative Expenses

Selling and administrative expenses include store expenses (such as payroll and occupancy costs) and costs related to warehousing, distribution, outbound transportation to our stores, advertising, purchasing, insurance, non-income taxes, accepting credit/debit cards, impairment charges, 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 \$63.8 million and \$81.9 million for the second quarter of 2023 and the second quarter of 2022, respectively, and \$204.1 million and \$164.0 million for the year-to-date 2023 and the year-to-date 2022, respectively. Included in our distribution and outbound transportation costs for the second quarter of 2023 were \$2.0 million of closing costs associated with the closure of our forward distribution centers (“FDCs”), and immaterial expense associated with the exit from our Prior Synthetic Lease (as defined below in Note 3) that was refinanced in the first quarter of 2023. In the year-to-date 2023, we recognized \$10.6 million of FDC closing costs and \$53.6 million of costs related to the exit from our Prior Synthetic Lease. As of the end of the second quarter of 2023, we have ceased all business operations at our FDCs and are actively marketing each of these locations for sublease.

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 \$19.4 million and \$22.0 million for the second quarter of 2023 and the second quarter of 2022, respectively, and \$44.3 million and \$43.4 million for the year-to-date 2023 and the year-to-date 2022, respectively.

Supplemental Cash Flow Disclosures

The following table provides supplemental cash flow information for the year-to-date 2023 and the year-to-date 2022:

(In thousands)	Twenty-six Weeks Ended	
	July 29, 2023	July 30, 2022
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 17,992	\$ 7,977
Cash paid for income taxes, excluding impact of refunds	570	3,879
Gross proceeds from long-term debt	910,500	998,000
Gross payments of long-term debt	718,700	748,900
Cash paid for operating lease liabilities	241,652	183,186
Non-cash activity:		
Assets acquired under finance lease	6,680	3,792
Accrued property and equipment	8,653	26,086
Deemed acquisition in “failed sale-leaseback transaction”	100,000	—
Operating lease assets obtained in exchange for operating lease liabilities	112,743	123,906
Valuation allowance on deferred tax assets	147,850	—

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 Finance Program* 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 July 29, 2023, we had a Borrowing Base (as defined under the 2022 Credit Agreement) of \$829.4 million under the 2022 Credit Agreement. At July 29, 2023, we had \$493.2 million in borrowings outstanding under the 2022 Credit Agreement and \$41.2 million committed to outstanding letters of credit, leaving \$295.0 million available under the 2022 Credit Agreement, subject to certain borrowing base limitations as further discussed above. At July 29, 2023, we had \$212.1 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. We believe the carrying value of our debt is a reasonable approximation of fair value.

Secured Insurance Premium Financing Obligation

In the second quarter of 2023, we entered into three individual financing agreements (“2023 Term Notes”) aggregating to \$16.2 million, which are secured by our unearned insurance premiums. The 2023 Term Notes will expire between January 2024 and May 2024. We are required to make monthly payments over the term of the 2023 Term Notes and are permitted to prepay, subject to penalties, at any time. The 2023 Term Notes carry annual interest rates ranging from 7.1% to 8.5%. The Company did not receive any cash in connection with the 2023 Term Notes.

Debt was recorded in our consolidated balance sheets as follows:

Instrument (In thousands)	July 29, 2023	January 28, 2023
2022 Credit Agreement	\$ 493,200	\$ 301,400
2023 Term Notes	11,239	—
Total debt	\$ 504,439	\$ 301,400
Less current portion of 2023 Term Notes (included in Accrued operating expenses)	(11,239)	—
Long-term debt	\$ 493,200	\$ 301,400

NOTE 3 – SYNTHETIC LEASE

Synthetic Lease

On March 15, 2023, AVDC, LLC (“Lessee”), a wholly-owned indirect subsidiary of 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 Lessee 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 Lessee 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, Lessee 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 Lessee’s interest in the Leased Property. In addition, Lessee, 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 Lessee does not comply with the LTV Test, Lessee 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, Lessee would be entitled to receive ownership in the Leased Property from Lessor.

The 2023 Synthetic Lease related to our Apple Valley, CA distribution center was terminated and paid off on August 25, 2023 in connection with the closing of the sale and leaseback transactions described in more detail in [Note 10](#) - *Subsequent Event*.

NOTE 4 – SHAREHOLDERS’ EQUITY

Earnings per Share

No adjustments were 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 July 29, 2023, performance share units that vest based on relative total shareholder return (“TSR PSUs” - see [Note 5](#) - *Share Based Plans* for a more detailed description of these awards) and shareholder value creation awards (“SVCA PSUs” - see [Note 5](#) - *Share Based Plans* 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. Antidilutive restricted stock units (“RSUs”), performance share units (“PSUs”), SVCA PSUs, and TSR PSUs are excluded from the calculation because they decrease the number of diluted shares outstanding under the treasury stock method. The aggregate number of RSUs, PSUs, SVCA PSUs, and TSR PSUs that were antidilutive, as determined under the treasury stock method, was 1.7 million and 0.6 million for the second quarter of 2023 and the second quarter of 2022, respectively, and 1.3 million and 0.4 million for the year-to-date 2023 and the year-to-date 2022, respectively. Due to the net loss recorded in each respective period presented in the consolidated statements of operations, any potentially dilutive shares were excluded from the denominator in computing diluted earnings (loss) per common share for the second quarter of 2023, second quarter of 2022, the year-to-date 2023, and the year-to-date 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, our compliance with the terms of the 2022 Credit Agreement, and other factors. The 2021 Repurchase Authorization has no scheduled termination date. In the second quarter of 2023, second quarter of 2022, the year-to-date 2023, and the year-to-date 2022, no shares were repurchased under the 2021 Repurchase Authorization. As of July 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 include shares acquired to satisfy income tax withholdings associated with the vesting of share-based awards.

Dividends

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

	Dividends Per Share	Amount Declared	Amount Paid
2023:		(In thousands)	(In thousands)
First quarter	\$ 0.30	\$ 9,116	\$ 9,587
Second quarter	—	(119)	153
Total	\$ 0.30	\$ 8,997	\$ 9,740

The amount of dividends declared may vary from the amount of dividends paid in a period due to the vesting of share-based awards. Furthermore, dividends declared may fluctuate on a periodic basis due to the forfeiture of unpaid dividends associated with unvested 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 \$4.4 million and \$3.9 million in the second quarter of 2023 and the second quarter of 2022, respectively, and \$8.5 million and \$7.5 million for the year-to-date 2023 and the year-to-date 2022, respectively.

Non-vested Restricted Stock Units

The following table summarizes the non-vested RSU activity for the year-to-date 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
Granted	228,662	\$ 8.71
Vested	(58,823)	\$ 31.28
Forfeited	(63,066)	\$ 20.12
Outstanding non-vested RSUs at July 29, 2023	1,982,781	\$ 18.68

The non-vested RSUs granted in the year-to-date 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.

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

In the second quarter of 2023, 46,937 common shares underlying the restricted stock units granted in 2022 to the non-employee directors vested on the trading day immediately preceding our 2023 Annual Meeting of Shareholders ("2023 Annual Meeting"). These units were part of the annual compensation of the non-employee directors of the Board. In the second quarter of 2023, the chairman of our Board received an annual restricted stock unit grant having a grant date fair value of approximately \$245,000 and the remaining non-employees elected to our Board at our 2023 Annual Meeting each received an annual restricted stock unit grant having a grant date fair value of approximately \$145,000. The 2023 restricted stock units will vest on the earlier of (1) the trading day immediately preceding our 2024 Annual Meeting of Shareholders, or (2) the non-employee director's death or disability. However, the non-employee directors will forfeit their restricted stock units if their service on the Board terminates before either vesting event occurs.

Performance Share Units

In the year-to-date 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.

In the third quarter of 2023, the Committee established the financial performance objectives for the 2023 fiscal year, which apply to the 2021 PSUs, 2022 PSUs, and the 2023 PSUs awards.

The 2023 PSU awards were issued with three distinct annual minimum financial performance objectives. 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 the three performance periods 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 three-year 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.

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 year-to-date 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 year-to-date 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 July 29, 2023	Actual Grant Date	Expected Valuation (Grant) Date	Actual or Expected Expense Period
2021	PSU	121,123	August 2023		Fiscal 2023
2022	TSR PSU	55,144	Fiscal 2022		Fiscal 2022 - 2024
2022	PSU	220,618		March 2024	Fiscal 2024
2023	PSU	475,548	August 2023	March 2024 and 2025	Fiscal 2023 - 2025
2023	TSR PSU	118,881	March 2023		Fiscal 2023 - 2025
2023	SVCA PSU	554,031	March 2023		Fiscal 2023 - 2025
Total		1,545,345			

We recognized \$0.4 million and \$0.3 million of share-based compensation expense related to SVCA PSUs and TSR PSUs in the second quarter of 2023 and the second quarter of 2022, respectively, and \$0.8 million and \$0.4 million of share-based compensation expense related to SVCA PSUs and TSR PSUs in the year-to-date 2023 and the year-to-date 2022, respectively. As of July 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 July 29, 2023.

The following table summarizes the activity related to TSR PSUs and SVCA PSUs for the year-to-date 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
Granted	12,733	\$ 4.28
Vested	—	\$ —
Forfeited	(52,144)	\$ 8.50
Outstanding TSR PSUs and SVCA PSUs at July 29, 2023	728,056	\$ 8.66

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

	Second Quarter		Year-to-Date	
(In thousands)	2023	2022	2023	2022
Total fair value of restricted stock vested	\$ 458	\$ 1,289	\$ 3,868	\$ 13,920
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 July 29, 2023, was approximately \$30.8 million. We expect to recognize this compensation cost through June 2026 based on existing vesting terms with the weighted-average remaining expense recognition period being approximately 2.2 years from July 29, 2023.

NOTE 6 – INCOME TAXES

The provision for income taxes was based on a current estimate of the annual effective tax rate, adjusted to reflect the effect of discrete items.

For the year-to-date 2023, the Company determined it could estimate the effective income tax rate with sufficient precision. Therefore, the income tax expense (benefit) was based 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 August 3, 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 record income tax expense, income tax receivable, and deferred tax assets and related liabilities based on management's best estimates. Additionally, we assess the likelihood of realizing the benefits of our deferred tax assets. Our ability to recover these deferred tax assets depends on several factors, including our ability to project future taxable income. In evaluating future taxable income, significant weight is given to positive and negative evidence that is objectively verifiable. As a result of the losses recorded in fiscal 2022 and year-to-date 2023, our cumulative three-year results are in a loss position as of July 29, 2023, which is significant objective negative evidence in considering whether deferred tax assets are realizable. Such objective evidence limits the ability to consider other subjective evidence, such as the projection of future taxable income. As a result, as of July 29, 2023 a valuation allowance has been recognized as a reserve on the total deferred tax asset balance due to the uncertainty of realization of our loss carry forwards and other deferred tax assets. Valuation allowances recorded on deferred taxes were \$147.9 million and \$0.0 million in the second quarter of 2023 and the second quarter of 2022, respectively, and \$147.9 million and \$0.0 million in the year-to-date 2023 and year-to-date 2022, respectively.

NOTE 7 – CONTINGENCIES

California Wage and Hour Matters

We have defended several wage and hour matters in California. The cases were brought by various current and/or former California associates alleging various violations of California wage and hour laws. During the second quarter of 2023, we determined an incremental loss from the wage and hour matters was probable and we increased our accrual for litigation by recording an additional \$0.9 million charge as our settlement accrual for these matters in aggregate. At July 29, 2023, our remaining accrual for California wage and hour matters was \$0.9 million.

Other 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:

	Second Quarter		Year-to-Date	
(In thousands)	2023	2022	2023	2022
Furniture	\$ 263,720	\$ 322,744	\$ 575,864	\$ 746,003
Seasonal	244,359	331,299	421,367	565,470
Food	159,171	172,513	323,991	349,133
Soft Home	143,926	163,672	285,806	333,338
Consumables	135,197	151,989	270,964	309,223
Apparel, Electronics, & Other	116,592	115,870	232,288	238,905
Hard Home	76,396	88,134	152,658	178,863
Net sales	\$ 1,139,361	\$ 1,346,221	\$ 2,262,938	\$ 2,720,935

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 July 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 \$17.6 million and \$35.4 million as of July 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.

As of August 1, 2023, the SCF program had a \$0.0 million revolving capacity for new commitments as the previous participating financial institution is no longer participating in the SCF program. All outstanding commitments as of August 1, 2023, will be fulfilled under the original terms of the SCF program. As of September 1, 2023, a new participating financial institution has agreed to participate in the SCF program. As of September 1, 2023, the SCF program had a revolving capacity of approximately \$30.0 million. All other terms except for the revolving capacity, under the SCF program will remain substantially similar under the new participating financial institution.

NOTE 10 – SUBSEQUENT EVENT

On August 25, 2023, we simultaneously terminated the Synthetic Lease for our Apple Valley, CA distribution center (“AVDC”), took title to the AVDC property and completed sale and leaseback transactions for the AVDC and 22 owned store locations (“SLB Stores”). The transactions, which were completed with the same buyer-lessor of our four other regional distribution centers, also included a five-year extension of the lease for our Columbus, OH distribution center (“CODC”). The aggregate gross cash consideration received in the transaction was \$300.1 million, which we used to pay transaction expenses, fully pay off the 2023 Synthetic Lease for approximately \$101 million and repay borrowings under the 2022 Credit Agreement. The accounting treatment for these transactions has not yet been finalized; however, our initial expectations are disclosed below.

We expect to allocate a portion of the cash consideration received to the extension of the lease for CODC and we expect that cash consideration to be treated as a lease incentive. We expect the remainder of the cash consideration received to be allocated to the sale-leaseback transactions. In accordance with sale-leaseback accounting guidelines, the remaining cash received will be compared, on an individual property basis, to the fair market value of the properties. Any property sales determined to be above-market sales will give rise to an aggregate off-market adjustment liability, with any below market sales resulting in an aggregate off-market adjustment to net proceeds on the sale and a corresponding increase in prepaid rent associated with the

leases. The aggregate net book value of AVDC and the SLB Stores assets was approximately \$122.0 million as of July 29, 2023. As a result, we expect to record a significant gain on the sale of assets in the third quarter of 2023.

We expect that the leases we entered into with the buyer-lessor will be treated as operating leases, in which case we would record the right of use assets within operating lease right of use asset in our consolidated balance sheets. For above-market transactions, expected future payments to the buyer-lessor would be allocated between the lease liability and the off-market adjustment liability. The leases will have an initial term of 20 years and multiple extension options. The purchase and sale agreement restricts us from drawing on the 2022 Credit Agreement for any purpose other than working capital, general corporate, operational requirements or capital expenditures for 180 days following the closing of the transactions unless our availability under the 2022 Credit agreement exceeds \$500 million as of the end of a quarterly reporting period.

Our aggregate initial annual cash payments to the buyer-lessor for AVDC and the SLB stores are approximately \$23 million and the payments will escalate two percent annually.

We currently expect to close sale and leaseback transactions with respect to two additional owned store locations in the third quarter of 2023, subject to due diligence and other customary closing conditions.

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 second quarter of 2023 that we believe are key indicators of our operating performance when compared to our operating performance from the second quarter of 2022:

- Net sales decreased \$206.9 million, or 15.4%.
- Comparable sales for stores open at least fifteen months, plus our e-commerce net sales, decreased \$187.3 million, or 14.6%.
- Gross margin dollars decreased \$62.6 million, while gross margin rate increased 40 basis points to 33.0% of net sales.
- Selling and administrative expenses decreased \$53.7 million to \$456.7 million. As a percentage of net sales, selling and administrative expenses increased 220 basis points to 40.1% of net sales.
- Included within our selling and administrative expenses were contract termination costs and other related expenses associated with closure of our forward distribution centers (“FDCs”) of \$2.0 million. Included in depreciation expense was \$7.0 million related to accelerated depreciation due to the closure of FDCs.
- Also included within our selling and administrative expenses was a gain on sale of real estate and related expenses of \$3.4 million.
- Also included within our selling and administrative expenses were fees related to cost reduction and productivity initiatives of \$5.4 million.
- Operating loss rate increased 260 basis points to (10.7)%.
- Income tax expense (benefit) increased \$145.2 million from an income tax benefit of \$28.6 million in the second quarter of 2022 to income tax expense of \$116.6 million in the second quarter of 2023. The increase in expense was primarily due to a valuation allowance recorded on our deferred tax assets of \$147.9 million.
- Diluted loss per share increased to \$(8.56) per share in the second quarter of 2023 from \$(2.91) per share in the second quarter of 2022.
- Inventory decreased by 15.2%, or \$175.8 million, from \$1,159.0 million at the end of the second quarter of 2022 to \$983.2 million at the end of the second quarter of 2023. This decrease is primarily due to a 5% decrease in average unit cost of on hand inventory, and a 6% decrease in units on hand.
- On May 23, 2023, our Board of Directors suspended the Company’s quarterly cash dividend. As a result, we did not declare, or pay, a quarterly cash dividend in the second quarter of 2023; compared to the quarterly cash dividend of \$0.30 per common share paid in the second 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 year-to-date 2023 and the year-to-date 2022:

	2023	2022
Stores open at the beginning of the fiscal year	1,425	1,431
Stores opened during the period	4	18
Stores closed during the period	(7)	(7)
Stores open at the end of the period	1,422	1,442

We expect our store count at the end of 2023 to decrease by over 35 stores 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 income (loss) as a percentage of net sales at the end of each period:

	Second Quarter		Year-to-Date	
	2023	2022	2023	2022
Net sales	100.0 %	100.0 %	100.0 %	100.0 %
Cost of sales (exclusive of depreciation expense shown separately below)	67.0	67.4	66.0	65.3
Gross margin	33.0	32.6	34.0	34.7
Selling and administrative expenses	40.1	37.9	47.4	36.4
Depreciation expense	3.6	2.8	3.4	2.7
Operating loss	(10.7)	(8.1)	(16.9)	(4.5)
Interest expense	(1.0)	(0.3)	(0.9)	(0.2)
Other income (expense)	0.0	0.0	0.0	0.0
Loss before income taxes	(11.7)	(8.4)	(17.8)	(4.7)
Income tax expense (benefit)	10.2	(2.1)	2.3	(1.2)
Net loss and comprehensive loss	(21.9)%	(6.3)%	(20.1)%	(3.5)%

SECOND QUARTER OF 2023 COMPARED TO SECOND 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 second quarter of 2023 compared to the second quarter of 2022 were as follows:

(\$ in thousands)	Second Quarter							
	2023		2022		Change		Comps	
Furniture	\$	263,720	23.2 %	\$	322,744	24.0 %	\$	(59,024) (18.3)% (18.5)%
Seasonal		244,359	21.4		331,299	24.6		(86,940) (26.2) (26.2)
Food		159,171	14.0		172,513	12.8		(13,342) (7.7) (5.2)
Soft Home		143,926	12.6		163,672	12.2		(19,746) (12.1) (11.5)
Consumables		135,197	11.9		151,989	11.3		(16,792) (11.0) (7.4)
Apparel, Electronics, & Other		116,592	10.2		115,870	8.6		722 0.6 0.5
Hard Home		76,396	6.7		88,134	6.5		(11,738) (13.3) (11.8)
Net sales	\$	1,139,361	100.0 %	\$	1,346,221	100.0 %	\$	(206,860) (15.4)% (14.6)%

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 \$206.9 million, or 15.4%, to \$1,139.4 million in the second quarter of 2023, compared to \$1,346.2 million in the second quarter of 2022. The decrease in net sales was primarily driven by a 14.6% decrease in our comps, which decreased net sales by \$187.3 million and our non-comparable sales, which decreased net sales by \$19.6 million, driven by the net decrease of 20 stores since the second quarter of 2022. Our comps are calculated based on the results of all stores that were open at least fifteen months plus our e-commerce net sales.

Our decreased net sales and comps in the second 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 second quarter of 2023, we experienced decreased comps and net sales in all of our merchandise categories, except Apparel, Electronics, & Other, where we experienced slightly positive comps and net sales. 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 second quarter of 2023, our shortage of our Broyhill® branded product negatively impacted comps and sales for our home product categories, particularly Furniture. In November 2022, our largest Broyhill® furniture supplier, United Furniture, Inc., abruptly closed without prior notice to us, 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 second quarter of 2022. In the latter part of the second quarter of 2023, our in-stock levels of Broyhill® branded product began to return to more normal levels and we experienced an improvement in Furniture sales trends, although Furniture sales continued to decline versus 2022. As discussed above, we believe that macro economic pressures significantly reduced our customer's discretionary spending, which led to the decreased net sales and comps in all our home products categories. We believe our Seasonal net sales and comps in the second quarter of 2023, particularly our lawn & garden and summer departments, were significantly impacted by the decrease in demand for large-ticket products, in addition to the aggressive category-specific promotional activity in the second quarter of 2022, which we did not repeat to the same degree in the second quarter of 2023.

Our Food and Consumables categories experienced decreases in comps and net sales in the second quarter of 2023. These categories performed slightly better than our home products categories as they are less sensitive to changes in discretionary spending.

Our Apparel, Electronics, & Other category experienced slight increases in net sales and comps largely driven by the success of our closeout offerings in the second quarter of 2023. We believe that the net sales of our Apparel, Electronics, & Other category benefited from our “Bargains, Treasures, and Essentials” merchandising strategy, as we continue to expand the lower entry-level price points in our product offering in the second quarter of 2023.

Gross Margin

Gross margin dollars decreased \$62.6 million, or 14.3%, to \$375.9 million for the second quarter of 2023, compared to \$438.5 million for the second quarter of 2022. The decrease in gross margin dollars was due to a decrease in net sales, which decreased gross margin dollars by \$67.4 million, partially offset by an increase in gross margin rate, which increased gross margin dollars by \$4.8 million. Gross margin as a percentage of net sales increased 40 basis points to 33.0% in the second quarter of 2023 as compared to 32.6% in the second quarter of 2022. The gross margin rate increase was primarily due to lower inbound freight costs and a slightly lower shrink rate, partially offset by a higher markdown rate. Inbound freight costs continue to decline due to lower ocean carriage rates, lower fuel costs, and decreased inbound volume versus the second quarter of 2022. The lower shrink rate was primarily driven by improvements in unit and dollar loss in our 2023 physical inventory counts, partially offset by sales deleverage. The higher markdown rate was a result of the decline in sales in the second quarter of 2023 compared to the second quarter of 2022, as our markdown volume in the second quarter of 2023 was similar to the second quarter of 2022 as we continue to discount merchandise to drive store traffic and move through inventory.

Selling and Administrative Expenses

Selling and administrative expenses were \$456.7 million for the second quarter of 2023, compared to \$510.4 million for the second quarter of 2022. The decrease of \$53.7 million in selling and administrative expenses was primarily driven by the absence of store asset impairment charges as compared to the second quarter of 2022 store asset impairment charges of \$24.1 million resulting from a review of underperforming stores (see [Note 1 - Basis of Presentation and Summary of Significant Accounting Policies](#) to the accompanying consolidated financial statements), a decrease in distribution and transportation costs of \$18.1 million, decrease in store payroll expense of \$5.8 million, and a decrease in store occupancy of \$5.7 million. The decrease in distribution and transportation expenses was largely driven by the cessation of our FDC operations resulting in the absence of FDC operational costs as well as other supply chain cost-saving initiatives in the second quarter of 2023. The decrease in store payroll was driven by a lower store count compared to the second quarter of 2022 and an overall reduction in store headcount and payroll hours.

As a percentage of net sales, selling and administrative expenses increased 220 basis points to 40.1% for the second quarter of 2023 compared to 37.9% for the second quarter of 2022.

Depreciation Expense

Depreciation expense increased \$4.1 million to \$41.3 million in the second quarter of 2023, compared to \$37.2 million in the second quarter of 2022. The increase in depreciation expense was driven by accelerated depreciation costs of \$7.0 million related to the closure of our FDCs, partially offset by decreases in depreciation due to asset impairment charges recorded in the trailing twelve months and decreased capital expenditures in the trailing twelve months.

Depreciation expense as a percentage of sales increased 80 basis points compared to the second quarter of 2022.

Interest Expense

Interest expense was \$11.2 million in the second quarter of 2023, compared to \$3.9 million in the second quarter of 2022. The increase in interest expense was primarily driven by higher total average borrowings (including finance leases and the sale and leaseback financing liability) and an increase in our weighted average interest rate. We had total average borrowings of \$637.8 million in the second quarter of 2023 compared to total average borrowings of \$397.8 million in the second quarter of 2022. The increase in our weighted average interest rate throughout the second quarter of 2023 compared to the second quarter of 2022 was due to higher borrowing rates under our 2022 Credit Agreement. The increase in total average borrowings was driven by borrowings under our credit facilities in the second quarter of 2023 compared to the second quarter of 2022.

Other Income (Expense)

Other income (expense) was \$0.0 million in the second quarter of 2023, compared to \$0.3 million in the second quarter of 2022. The change was driven by the absence of diesel fuel derivatives in the second quarter of 2023 compared to the gains on our diesel fuel derivatives in second quarter of 2022.

Income Taxes

The effective income tax rate for the second quarter of 2023 and the second quarter of 2022 was (87.5%) and 25.4%, respectively. The change in the effective income tax rate was driven by a full valuation allowance of \$147.9 million recorded against our deferred tax assets, partially offset by the effect of carry back employment related tax credits and state net operating losses to prior fiscal periods.

YEAR-TO-DATE 2023 COMPARED TO YEAR-TO-DATE 2022

Net Sales

Net sales by merchandise category (in dollars and as a percentage of total net sales) in the year-to-date 2023 and the year-to-date 2022, and the change in net sales (in dollars and percentage) and the change in comps (in percentage) from the year-to-date 2023 compared to the year-to-date 2022 were as follows:

Year-to-Date								
(\$ in thousands)	2023			2022		Change		Comps
Furniture	\$	575,864	25.4 %	\$	746,003	27.4 %	\$ (170,139) (22.8)%	(23.4)%
Seasonal		421,367	18.6		565,470	20.8	(144,103) (25.5)	(25.6)
Food		323,991	14.3		349,133	12.8	(25,142) (7.2)	(5.0)
Soft Home		285,806	12.6		333,338	12.2	(47,532) (14.3)	(14.2)
Consumables		270,964	12.0		309,223	11.4	(38,259) (12.4)	(9.3)
Apparel, Electronics, & Other		232,288	10.3		238,905	8.8	(6,617) (2.8)	(3.3)
Hard Home		152,658	6.8		178,863	6.6	(26,205) (14.7)	(13.7)
Net sales	\$	2,262,938	100.0 %	\$	2,720,935	100.0 %	\$ (457,997) (16.8)%	(16.5)%

Net sales decreased \$458.0 million, or 16.8%, to \$2,262.9 million in the year-to-date 2023, compared to \$2,720.9 million in the year-to-date 2022. The decrease in net sales was driven by a comp decrease of 16.5%, which decreased net sales by \$425.8 million, and our non-comparable store sales which decreased net sales by \$32.2 million, driven by the net decrease of 20 stores compared to the year-to-date 2022. Our decreased comps and net sales in the year-to-date 2023 were primarily due to decreased demand in the year-to-date 2023. The decrease in demand was 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. We believe the macro economic pressures led to the majority of the decrease in comps in the year-to-date 2023 with the remainder of decrease driven by promotions, weather, the shortage of our Broyhill® branded product, and other factors noted below.

In the year-to-date 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 year-to-date 2023, the shortage of our Broyhill® branded product negatively impacted comps and sales for our home product categories, particularly Furniture. In November 2022, our largest Broyhill® furniture supplier, United Furniture, Inc., abruptly closed without prior notice to us, 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 2022. As discussed above, we believe that macro economic pressures significantly reduced our customer's discretionary spending, which led to the decreased net sales and comps in all our home products categories. We believe our Seasonal net sales and comps in the year-to-date 2023, particularly our lawn & garden and summer departments, were adversely impacted by later-arriving warm weather in many parts of the U.S. in the first quarter of 2023. Our Seasonal sales and comps were also significantly impacted by the aggressive category-specific promotional activity in the second quarter of 2022, which we did not repeat to the same degree in the second quarter of 2023.

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

Our Apparel, Electronics, & Other category experienced a decrease in comps and net sales as a result of the decreased discretionary spending in the year-to-date 2023, as discussed above. We believe that the relatively modest decline in the net sales of our Apparel, Electronics, & Other category compared to the declines experienced in our other merchandise categories was attributable to our closeout offerings in the year-to-date 2023. We have continued to expand our “Bargains, Treasures, and Essentials” merchandising strategy, which offers lower entry-level price points with name brand closeout offerings in the year-to-date 2023.

Gross Margin

Gross margin dollars decreased \$174.7 million, or 18.5%, to \$768.4 million for the year-to-date 2023, compared to \$943.1 million for the year-to-date 2022. The decrease in gross margin dollars was due to a decrease in net sales, which decreased gross margin by \$158.7 million and a decrease in gross margin rate, which decreased gross margin by \$16.0 million. Gross margin as a percentage of net sales decreased 70 basis points to 34.0% in the year-to-date 2023, compared to 34.7% in the year-to-date 2022. The gross margin rate decrease was primarily a result of a higher markdown rate and a slightly higher shrink rate, partially offset by lower inbound freight costs. The higher markdown rate was a result of the decline in sales in the year-to-date 2023 compared to the year-to-date 2022, as our markdown volume in the year-to-date 2023 was similar to the year-to-date 2022 as we continue to discount merchandise to drive store traffic and move through slow moving Seasonal and home inventory categories. The slightly higher shrink rate was also driven by a cumulative adverse adjustment to our shrink accrual rate in the year-to-date 2023 as we projected better results for our 2023 physical inventory count results at the end of 2022 versus the actualized results in the year-to-date 2022. Inbound freight costs declined due to lower ocean carriage rates, lower fuel costs, and decreased inbound volume versus the year-to-date 2022.

Selling and Administrative Expenses

Selling and administrative expenses were \$1,073.8 million for the year-to-date 2023, compared to \$991.2 million for the year-to-date 2022. The increase of \$82.6 million in selling and administrative expenses was driven by the increase in store asset impairment charges resulting from a review of underperforming stores (see [Note 1 - Basis of Presentation and Summary of Significant Accounting Policies](#) to the accompanying consolidated financial statements) of \$58.8 million, a lease payment related to the exit from our Prior Synthetic Lease of \$53.6 million, termination costs and related expenses, related to the exit from our FDCs of \$10.6 million, partially offset by a decrease in store payroll of \$18.1 million, a decrease in store occupancy costs of \$7.3 million, a gain on sale of real estate and related expenses of \$7.2 million, and a decrease in other distribution and transportation costs.

As a percentage of net sales, selling and administrative expenses increased 1,100 basis points to 47.4% for the year-to-date 2023 compared to 36.4% for the year-to-date 2022.

Depreciation Expense

Depreciation expense increased \$3.3 million to \$77.9 million in the year-to-date 2023, compared to \$74.6 million for the year-to-date 2022. The increase was driven by accelerated depreciation costs of \$8.0 million related to the cessation of our FDC operations, partially offset by decreases due to asset impairment charges taken in the last twelve months and decreased capital expenditures in the last twelve months.

As a percentage of sales, depreciation expense increased by 70 basis points in the year-to-date 2023 compared to the year-to-date 2022.

Interest Expense

Interest expense was \$20.3 million in the year-to-date 2023, compared to \$6.7 million in the year-to-date 2022. The increase in interest expense was driven by higher total average borrowings (including finance leases and the sale and leaseback financing

liability) and an increase in our weighted average interest rate. We had total average borrowings of \$606.2 million in the year-to-date 2023 compared to \$349.4 million in the year-to-date 2022. The increase in our weighted average interest rate throughout the year-to-date 2023 compared to the year-to-date 2022 was due to higher borrowing rates under our 2022 Credit Agreement. The increase in total average borrowings was driven by our borrowings under the 2022 Credit Agreement throughout the year-to-date 2023 compared to the year-to-date 2022.

Other Income (Expense)

Other income (expense) was \$0.0 million in the year-to-date 2023, compared to \$1.3 million in the year-to-date 2022. The change was driven by the absence of diesel fuel derivatives in the year-to-date 2023 compared to the gains on our diesel fuel derivatives in year-to-date 2022.

Income Taxes

The effective income tax rate for the year-to-date 2023 and the year-to-date 2022 was (13.0%) and 25.6%, respectively. The change in the effective income tax rate was driven by a full valuation allowance of \$147.9 million recorded on our deferred assets, partially offset by the effect of carry back employment related tax credits and state net operating losses to prior fiscal periods.

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 impacts will abate over time but will continue to negatively impact the discretionary spending of our customers, particularly with respect to high ticket products, in the third and fourth quarters of 2023. In addition, our business has been impacted by a post-COVID shift of consumer spending away from home categories, a shift that we also expect to abate over time. We have incorporated our current best estimate of these impacts into the guidance below.

As of August 29, 2023, we expect the following in the third quarter of 2023:

- a comparable sales decrease in the low teens compared to the third quarter of 2022, sequential improvement from the second quarter of 2023;
- gross margin rate improvement of approximately 200 basis points compared to the third quarter of 2022; and
- combined selling and administrative expenses and depreciation down single digits compared to the third quarter of 2022.

As of August 29, 2023, we expect the following in the fourth quarter of 2023:

- a comparable sales decrease in the high single digits compared to the fourth quarter of 2022, improvement from the third quarter of 2023; and
- gross margin rate above the fourth quarter of 2022, in the high 30s, driven by lower freight costs and cost savings initiatives.

Due to accumulated losses, we do not expect to recognize any tax benefit for the third quarter of 2023.

We are not currently providing earnings per share guidance for the third and fourth quarters of 2023. However, we do anticipate a loss in the third quarter of 2023.

For 2023, we expect capital expenditures of approximately \$75 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 (as defined below). 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 July 29, 2023, we were in compliance with the covenants of the 2022 Credit Agreement.

On March 15, 2023, AVDC, LLC (“Lessee”), a wholly-owned indirect subsidiary 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 Lessee 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 Lessee 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, Lessee 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 Lessee’s interest in the Leased Property. In addition, Lessee, 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 Lessee does not comply with the LTV Test, Lessee 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, Lessee would be entitled to receive ownership in the Leased Property from Lessor.

As of July 29, 2023, we had a Borrowing Base (as defined under the 2022 Credit Agreement) of \$829.4 million under the 2022 Credit Agreement. At July 29, 2023, we had \$493.2 million in borrowings outstanding under the 2022 Credit Agreement and \$41.2 million committed to outstanding letters of credit, leaving \$295.0 million available under the 2022 Credit Agreement, subject to certain borrowing base limitations as further discussed above. At July 29, 2023, we had \$212.1 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. On August 25, 2023, we simultaneously terminated the 2023 Synthetic Lease for our Apple Valley, CA distribution center (“AVDC”) and completed sale and leaseback transactions for the AVDC and 22 owned store locations (“SLB Stores”). The aggregate gross cash consideration received in the sale and leaseback transactions was \$300.1 million, which we used to pay transaction expenses, pay off the 2023 Synthetic Lease for approximately \$101 million and repay borrowings under the 2022 Credit Agreement. In addition to the liquidity generated by the sale and leaseback transactions, 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, our compliance with the terms of the 2022 Credit Agreement, and other factors. The 2021 Repurchase Authorization has no scheduled termination date. In the second quarter of 2023, we did not purchase any shares under the 2021 Repurchase Authorization. As of July 29, 2023, we had \$159.4 million available for future repurchases under the 2021 Repurchase Authorization.

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.

In the year-to-date 2023, we paid approximately \$9.7 million in dividends compared to \$19.5 million in the year-to-date 2022. The decrease in dividends paid was due to the suspension of the Company's quarterly cash dividend in the second quarter of 2023, which resulted in one dividend paid in the year-to-date 2023 compared to two dividends paid in the year-to-date 2022.

The following table compares the primary components of our cash flows from the year-to-date 2023 compared to the year-to-date 2022:

<i>(In thousands)</i>	2023	2022	Change
Net cash used in operating activities	\$ (150,611)	\$ (135,409)	\$ (15,202)
Net cash used in investing activities	(20,378)	(86,872)	66,494
Net cash provided by financing activities	\$ 172,293	\$ 217,703	\$ (45,410)

Cash used in operating activities increased \$15.2 million to \$150.6 million in the year-to-date 2023 compared to \$135.4 million in the year-to-date 2022. The increase was primarily due to an increase in net loss after adjusting for non-cash activities such as non-cash valuation allowance on deferred tax assets, non-cash impairment charge, non-cash lease expense, and the decrease in operating lease liabilities related to the refinance of the AVDC synthetic lease. This increase was partially offset by the combined impact of the change in inventory and accounts payable balances, driven by the decrease in inventory purchase volumes.

Cash used in investing activities decreased by \$66.5 million to \$20.4 million in the year-to-date 2023 compared to \$86.9 million in the year-to-date 2022. The decrease was driven by a decrease in capital expenditures, which was primarily due to decreased investments in new stores and other strategic initiatives.

Cash provided by financing activities decreased by \$45.4 million to \$172.3 million in the year-to-date 2023 compared to \$217.7 million in the year-to-date 2022. The decrease was driven by a reduction in net proceeds from long-term debt due to borrowings under the 2022 Credit Agreement to fund working capital requirements, partially offset by a decrease in dividends paid due to the absence of a dividend payment in the second quarter of 2023 and 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 related to the vesting of share-based awards.

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 \$493.2 million of borrowings under the 2022 Credit Agreement at July 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 \$4.9 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 second 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 ⁽¹⁾⁽²⁾	(b) Average Price Paid per Share ⁽¹⁾⁽²⁾	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs ⁽²⁾	(d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs ⁽²⁾
April 30, 2023 - May 27, 2023	2	\$ 8.37	—	159,425
May 28, 2023 - June 24, 2023	3	6.44	—	159,425
June 25, 2023 - July 29, 2023	1	8.71	—	159,425
Total	6	\$ 7.58	—	159,425

- (1) In May, June, and July 2023, in connection with the vesting of certain outstanding RSUs, we acquired 2,349, 2,848, and 1,256 of our common shares, respectively, which were withheld to satisfy minimum statutory 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 second quarter of 2023, we had no repurchases under the 2021 Repurchase Authorization. At July 29, 2023, the 2021 Repurchase Authorization had \$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.

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

Exhibit No.	Document
10.1	Participation Agreement, dated March 15, 2023, by and among AVDC, LLC, the Lessee, and the Banks named therein (incorporated herein by reference to Exhibit 10.1 to our Form 10-Q dated June 7, 2023).
10.2	Lease Agreement, dated March 15, 2023, by and among AVDC, LLC, the Lessee, and the Banks named therein (incorporated herein by reference to Exhibit 10.2 to our Form 10-Q dated June 7, 2023).
10.3	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).
10.4	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).
10.5	Lease Agreement dated August 25, 2023, between BLBO Tenant, LLC and Big AVCA Owner LLC relating to the registrant's distribution center located in Apple Valley, California (incorporated herein by reference to Exhibit 10.1 to our Form 8-K dated August 31, 2023).
10.6	Lease Amendment dated August 25, 2023, between Big Lots Stores, LLC and BigCOOH002 LLC relating to the registrant's distribution center located in Columbus, Ohio (incorporated herein by reference to Exhibit 10.2 to our Form 8-K dated August 31, 2023).
10.7*#	Agreement for Purchase and Sale of Real Property, dated July 30, 2023, by and among Big Lots, Inc. as the Seller and the Buyers named therein.
10.8*#	First Amendment to the Agreement for Purchase and Sale of Real Property, dated July 31, 2023, by and among Big Lots, Inc. as the Seller and the Buyers named therein.
10.9*#	Second Amendment to the Agreement for Purchase and Sale of Real Property, dated August 4, 2023, by and among Big Lots, Inc. as the Seller and the Buyers named therein.
10.10*#	Third Amendment to the Agreement for Purchase and Sale of Real Property, dated August 15, 2023, by and among Big Lots, Inc. as the Seller and the Buyers named therein.
31.1*	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.Def*	XBRL Taxonomy Definition Linkbase Document
101.Pre*	XBRL Taxonomy Presentation Linkbase Document
101.Lab*	XBRL Taxonomy Labels Linkbase Document
101.Cal*	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: September 6, 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)

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

**AGREEMENT FOR PURCHASE AND SALE
OF REAL PROPERTY**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this “**Agreement**”) is made as of this ____ day of June, 2023 (the “**Effective Date**”), by and among **BIG Portfolio Owner LLC**, **BIG SATX Owner LLC**, **BIG DETX Owner LLC**, **BIG AVCA Owner LLC**, and **BIG FBTX Owner LLC**, each a Delaware limited liability company (“**Buyer**”), and **Big Lots Stores, LLC**, an Ohio limited liability company (“**BLS SELLER**”), **Big Lots Stores – PNS, LLC**, a California limited liability company (“**PNS SELLER**”), and **AVDC, LLC**, an Ohio limited liability company (“**AVDC SELLER**”; AVDC Seller, BLS Seller, and PNS Seller, collectively, “**Seller**”).

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions.

The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

- (a) “**Allocated Purchase Price**” has the meaning ascribed to such term in Section 3(c) hereof.
- (b) “**Anti-Money Laundering and Anti-Terrorism Laws**” has the meaning ascribed to such term in Section 11(m) hereof.
- (c) “**AVDC Property**” shall mean that certain Real Property located at 18880 Navajo Road, Apple Valley, California.
- (d) “**AVDC Synthetic Lease**” shall mean the transaction evidenced by, among other documents, (a) that certain Lease Agreement dated March 15, 2023, by and between BCC, and AVDC Seller, as lessee, as memorialized by that certain Memorandum of Lease, and Fee and Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated March 15, 2023, and recorded on March 16, 2023, as Document No. 2023-0062659, and as modified by that certain Lease Supplement No. 1 dated as of March 15, 2023, and (b) that certain Participation Agreement dated March 15, 2023, by and among MUFG Bank, Ltd., as administrative agent for BCC and the rent assignees party thereto (the “**Rent Assignees**”), MUFG Bank, Ltd., as collateral agent for the Rent Assignees, Guarantor and certain subsidiaries of the Guarantor party thereto.
- (e) “**BCC**” shall mean Bankers Commercial Corporation, a California corporation, or the fee owner(s) of the AVDC Property, if not Bankers Commercial Corporation.
- (f) “**Buildings**” shall mean all buildings located on the Land.

- (g) “**Business Day**” or “**business day**” means any day other than Saturday, Sunday or any federal legal holiday.
- (h) “**Buyer’s Notice Address**” shall be as follows, except as same may be changed pursuant to Section 15 hereof:

c/o Oak Street Real Estate Capital, LLC
30 N. LaSalle St., Suite 4140
Chicago, IL 60602
Attn: Asset Management
Email: oakstreetAM@blueowl.com

With a copy to:

Kirkland & Ellis LLP
300 N. LaSalle Street
Chicago, Illinois 60654
Attn.: David A. Rosenberg, P.C. & David P. Stanek
Email: david.rosenberg@kirkland.com & david.stanek@kirkland.com

- (i) “**California Properties**” shall collectively mean all of the Real Properties located in the State of California.
- (j) “**Closing**” shall mean the consummation of the transactions contemplated by this Agreement.
- (k) “**Closing Date**” shall mean the actual date of Closing, as provided in Section 10 hereof.
- (l) “**Claim Cap**” has the meaning ascribed to such term in Section 9(f) hereof.
- (m) “**Colorado Property**” shall mean the Real Property located in the State of Colorado.
- (n) “**Columbus DC Lease Amendment**” shall mean that certain lease amendment attached hereto as Exhibit G.
- (o) “**Code**” has the meaning ascribed to such term in Section 11(l) hereof.
- (p) “**Demand**” has the meaning ascribed to such term in Section 8(b) hereof.
- (q) “**Earnest Money**” shall mean [*] (together with all interest accrued thereon).
- (r) “**Elyria Property**” shall mean all the Real Property located at 825 Cleveland St, Elyria, Ohio 44035.
- (s) “**ERISA**” has the meaning ascribed to such term in Section 11(l) hereof.

- (t) “**Environmental Laws**” has the meaning ascribed to such term in Section 11(j) hereof.
- (u) “**Examination Period**” shall mean the period beginning on the Effective Date and extending until 6:00 p.m. (New York, New York time) on the date that is thirty (30) days after the Effective Date; as it may be extended pursuant to Section 6(b).
- (v) “**Executive Order**” has the meaning ascribed to such term in Section 11(m) hereof.
- (w) “**FIRPTA**” has the meaning ascribed to such term in Section 11(h) hereof.
- (x) “**Florida Properties**” shall collectively mean all of the Real Properties located in the State of Florida.
- (y) “**Guarantor**” shall mean Big Lots, Inc., an Ohio corporation.
- (z) “**Guarantor’s Credit Facility**” shall mean Guarantor’s revolving credit facility evidenced by that certain Credit Agreement dated as of September 21, 2022, by and among Guarantor, certain affiliates thereof, PNC Bank, National Association, as the Administrative Agent, and certain financial institutions party thereto from time to time in their respective capacities as Lenders, Agents, Arrangers, and Bookrunners thereunder, as the same may be amended, modified, supplemented, restated or refinanced from time to time.
- (aa) “**Guaranty**” means the guaranty to be entered into at Closing by Guarantor, as guarantor, in favor of Buyer, as landlord, guarantying the payment and performance of all of Tenant’s obligations under the Lease, the final form of which is included in the Lease form attached hereto as Exhibit C.
- (ab) “**Hazardous Substances**” shall mean any hazardous or toxic materials, substances or wastes, such as (a) substances defined as “hazardous substances,” “hazardous materials” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 USC Section 9601, et seq.) and/or the Hazardous Materials Transportation Act (49 USC Section 1801, et seq.), as either of such acts are amended from time to time; (b) any materials, substances or wastes which are toxic, ignitable, corrosive or reactive and which are regulated by any local governmental authority, any agency of the states in which the Real Property at issue is located or any agency of the United States of America; (c) asbestos, petroleum and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls (PCBs), and freon and other chlorofluorocarbons; and (d) those substances defined as any of the foregoing in the regulations adopted and publications promulgated pursuant to each of the aforesaid laws.
- (ac) “**Improvements**” shall mean all structures, improvements (including, without limitation, the Buildings), and fixtures not deemed movable trade fixtures owned by Seller located on the Land.
- (ad) “**Intangible Property**” shall mean Seller’s interest in all transferable licenses, permits, entitlements, development rights, approvals, awards (including, without

limitation, any condemnation awards), certificates of occupancy, utility agreements, architectural and engineering plans and specifications, site plans, surveys and schematics, and all warranties and guaranties used exclusively in connection with the operation of the Properties, if any, but excluding the name of any Seller and any derivation thereof and all intellectual property rights.

(ae) “**Land**” shall mean all of the parcels legally described on Exhibit A attached hereto, together with all rights, privileges, easements, servitudes and appurtenances thereunto belonging or appertaining.

(af) “**Lease**” means the lease agreement in the form attached hereto as Exhibit C.

(ag) “**Louisiana Property**” shall mean the Real Property located in the State of Louisiana.

(ah) “**Michigan Property**” shall mean the Real Property located in the State of Michigan.

(ai) “**Must Cure Items**” has the meaning ascribed to such term in Section 6(a) hereof.

(aj) “**New Exception**” has the meaning ascribed to such term in Section 6(a) hereof.

(ak) “**New Exception Review Period**” has the meaning ascribed to such term in Section 6(a) hereof.

(al) “**New Mexico Properties**” shall collectively mean all of the Real Properties located in the State of New Mexico.

(am) “**Objections**” has the meaning ascribed to such term in Section 6(a) hereof.

(an) “**Permitted Exceptions**” has the meaning ascribed to such term in Section 5 hereof.

(ao) “**Plan**” has the meaning ascribed to such term in Section 11(l) hereof.

(ap) “**Property**” and “**Properties**” (as the context shall require) shall mean each of the Real Properties, together with Seller’s right, title and interest in and to and the Intangible Property.

(aq) “**Purchase Price**” shall mean the sum of [*].

(ar) “**Rally’s Lease**” shall mean that certain Sublease (the “**2003 Sublease**”), dated December 15, 2003, by and between Checkers Drive-In Restaurants, Inc., as sublandlord, and Georgia National Restaurant Development, Inc., a/k/a National Restaurant Development, Inc. (“**Georgia National**”), as subtenant, as modified by that certain notice dated July 8, 2005, sent by Georgia National, as modified by that certain Agreement to Create Direct Leasehold with Prime Landlord and Sublease Amendment dated November

11, 2009, by and between PRM Investments, LLC, now as tenant, and PNS Stores, Inc. ("**PNSINC**"), as landlord, as modified by that certain notice dated March 31, 2010, sent by PRM Investments, LLC, as modified by that certain notice dated May 4, 2015, sent by PRM Investments, LLC, as amended by that certain Assignment of Sublease dated February 1, 2006, by and between by Georgia National, as assignor, to Pacific Restaurant Management, Inc., as assignee, and further amended by that certain First Extension and Modification Agreement dated June 26, 2020, by and between PNSINC, as landlord, and PRM Investments, LLC, as tenant, which 2003 Sublease incorporated certain terms and conditions of that certain Lease dated October 15, 1990, by and between PNSINC, as landlord, and West Cost Restaurant Enterprises, as tenant, ("**Original Rally's Tenant**"), as amended by that certain Lease Addendum dated October 15, 1990 by and between PNSINC and Original Rally's Tenant, as modified by that certain notice dated June 14, 1994, sent by Rally's Hamburgers, Inc., as modified by that certain notice dated May 9, 2000, sent by Carl Karcher Enterprises, Inc..

- (as) "**Real Properties**" shall mean, collectively, each and every Real Property.
- (at) "**Real Property**" shall mean, collectively, each parcel of Land and the Improvements located thereon.
- (au) "**Seller Entity**" shall mean, with respect to any Property, the applicable Seller entity that owns fee title to such Property as of the Effective Date or, in the case of the AVDC Property, AVDC Seller.
- (av) "**Seller's Notice Address**" shall be as follows, except as same may be changed pursuant to the Section 15 hereof:

Big Lots, Inc.
4900 East Dublin Granville Road
Columbus, OH 43081
Attn: Steve Hutkai
VP, Tax and Treasurer
Email: shutkai@biglots.com

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

With a copy to:

Jacinto A. Núñez
Vorys, Sater, Seymour and Pease LLP
50 S. Main Street
Suite 1200

Akron, OH 44308
Email: janunez@vorys.com

- (aw) “**Survey**” has the meaning ascribed to such term in Section 6(a) hereof.
- (ax) “**Survival Period**” has the meaning ascribed to such term in Section 9(f) hereof.
- (ay) “**Tenant**” shall mean BLBO Tenant, LLC, an Ohio limited liability company.
- (az) “**Texas Properties**” shall collectively mean all of the Real Properties located in the State of Texas.
- (ba) “**Title Insurer**” shall mean Chicago Title Insurance Company, 12500 Reed Hartman Highway, Suite 120, Cincinnati, Ohio 45241, Attn: Rebecca Radabaugh.
- (bb) “**Title Report**” has the meaning ascribed to such term in Section 6(a) hereof.
- (bc) “**Wendy’s Lease**” means that certain Lease dated as of May 5, 1977, by and between PNS Stores, Inc., as landlord (successor in interest to William Zimmerman, trustee of the William Zimmerman Trust), and W.K.S. Frosty Corporation, as tenant (successor in interest to Wenco Management, Inc.), as modified by notice dated as of January 2, 2008, sent by Southern California Food Services Corporation, as amended by that certain Amendment to Lease dated as of May 1, 2009, by and between PNS Stores, Inc., and Southern California Food Services, as modified by notice dated as of March 19, 2013, sent by Southern California Food Services Corporation, as modified by notice dated as of April 16, 2018, sent by W.K.S. Frosty Corporation, as amended by that certain Extension and Amendment to Lease Agreement dated as of October 24, 2018, by and between PNS Stores, Inc., as landlord, and W.K.S. Frosty Corporation, as tenant.

Section 2. Proration of Expenses and Payment of Costs and Recording Fees.

- (a) **Proration of Taxes.** All real estate taxes and assessments that are due and payable on or prior to the Closing Date shall be paid by Seller on or prior to the Closing Date. Tenant shall be responsible for payment of real estate taxes and assessments that are due and payable after the Closing Date in accordance with the Lease.
- (b) **Proration of Expenses.** Seller and Buyer agree that in connection with the Tenant entering into the Lease at Closing, there shall be no proration of utility charges or other expenses, whether accruing or payable prior to or after the Closing Date, and that all such utility charges and other expenses concerning the Properties shall be borne by the Tenant, as tenant under the Lease.
- (c) **Payment of Costs and Recording Fees.**
 - (i) At Closing, Buyer shall pay: (1) any premium or cost for any “extended coverage” under the Title Policy (as hereinafter defined) and the cost of any endorsements thereto (other than the cost of any endorsement issued in connection

with the cure of any title or survey exceptions that Seller elects or is expressly obligated to cure in accordance with this Agreement), except for the endorsements described in Section 2(c)(ii)(6) below; (2) one half of any reasonable escrow fees (and any other escrow fees) charged by the Title Insurer; (3) all costs, expenses and charges incurred in connection with any loan or financing obtained by Buyer, including the cost of any recording fees and any lender's policy or policies of title insurance issued to any lender to Buyer, except for the endorsements described in Section 2(c)(ii)(6) below; (4) one half of the recording costs for each Deed (other than transfer taxes); and, (5) except for Seller's Share of Third Party Report Costs (defined below), the costs of the Surveys, Zoning Reports, Environmental Reports, and PCRs (collectively, "**Third Party Reports**").

(ii) At Closing, Seller shall pay: (1) any premium or cost for the base premium for the Title Policy and the cost of any endorsements thereto issued in connection with the cure of any title or survey exceptions that Seller elects or is expressly obligated to cure in accordance with this Agreement; (2) one half of any reasonable escrow fees (and any other escrow fees) charged by the Title Insurer; (3) the costs to update and certify the abstracts of title, and the cost of the required title examination; (4) one half of the recording costs for each Deed (other than transfer taxes); (5) up to one half of the costs of the Third Party Reports for all Sites, not to exceed Two Hundred Thousand and 00/100 Dollars (\$200,000.00) ("**Seller's Share of Third Party Report Costs**"); and (6) the costs of an ALTA 15 endorsement for an owner's title insurance policy and lender's title insurance policy (the "ALTA 15 Endorsement").

(iii) Seller shall pay all applicable transfer taxes with respect to the Property (including, without limitation, any transfer tax or similar tax owed with respect to the Lease).

(iv) All other costs and expenses of Closing not described above shall be borne by Seller or Buyer in accordance with local custom.

(v) Notwithstanding anything to the contrary in this Agreement, (1) in the event that this Purchase Agreement terminates in its entirety, then (x) Buyer agrees to reimburse Seller for fifty percent (50%) of Seller's actual, out-of-pocket costs incurred for the Surveys, and (y) Seller agrees to reimburse Buyer for fifty percent (50%) of Buyer's actual, out-of-pocket costs incurred for the Zoning Reports, Environmental Reports, and PCRs, each within ten (10) days after receipt of an invoice therefor, and (2) in the event that this Purchase Agreement partially terminates pursuant to the terms hereof (including, without limitation, in the event a Property is excluded from this transaction pursuant to Section 6(d) below), then (x) Buyer agrees to reimburse Seller for fifty percent (50%) of Seller's actual, out-of-pocket costs incurred for the Survey(s) with respect to the applicable Property(ies), and (y) Seller agrees to reimburse Buyer for fifty percent (50%) of Buyer's actual, out-of-pocket costs incurred for the Zoning Report(s), Environmental Report(s), and PCR(s) with respect to the applicable Property(ies),

each within ten (10) days after receipt of an invoice therefor. This Section 2 shall survive the Closing and any earlier termination of this Agreement.

Section 3. **Payment of Purchase Price and Earnest Money.**

- (a) **Purchase Price.** Buyer shall pay the Purchase Price to Seller on the Closing Date in accordance with all the terms and conditions of this Agreement.
- (b) **Earnest Money.** The Earnest Money shall be delivered to Title Insurer by Buyer within five (5) business days after the Effective Date. The Earnest Money shall be deposited by Buyer in escrow with Title Insurer, to be applied as part payment of the Purchase Price on the Closing Date, or otherwise disbursed as agreed upon in accordance with the terms of this Agreement.
- (c) **Purchase Price Allocation.** For purposes of calculating real property transfer taxes and related fees, the title insurance amounts with respect to each Property, and the reduction of the Purchase Price in the event of any partial terminations or exclusions of Properties expressly permitted under this Agreement (including, without limitation, pursuant to Sections 6(a), 6(d), 7, and 9), the Purchase Price shall be allocated among the Properties as provided in Schedule 3(c) attached hereto (each, an “**Allocated Purchase Price**”). Such allocations have been established solely for such purposes and shall not be binding on Seller or Buyer for any other purposes, including income tax purposes or for financial and accounting purposes.
- (d) **Independent Consideration.** Notwithstanding anything herein to the contrary, a portion of the Earnest Money in the amount of One Hundred and 00/100 Dollars (\$100.00) shall be non-refundable to Buyer and deemed earned by Seller and will be paid over to Seller upon any termination of this Agreement as independent consideration for Seller’s performance under this Agreement. Any term or provision herein which provides for the return of the Earnest Money to Buyer shall mean the Earnest Money, less such independent consideration.

Section 4. **Sale of Properties.**

Seller agrees to sell and convey the Properties to Buyer (or its designees (as hereinafter defined) or permitted assignee) at the Closing upon the terms and conditions set forth in this Agreement. At Closing, the Tenant shall enter into the Lease, and Seller and Buyer, each acknowledges and agrees that the execution and delivery of the Lease, and the tenancy created thereby, is a condition to the effectiveness of the sale of the Properties to Buyer, without which neither Buyer nor Seller would be willing to consummate the transactions contemplated hereby.

Section 5. **Title.**

At Closing, Seller agrees to execute and deliver to Buyer (or its designees or permitted assignee) (a) with respect to the California Properties, deeds in the form attached as Exhibit B-1, (b) with respect to the Colorado Property, a deed in the form attached as Exhibit B-2, (c) with respect to the Florida Properties, deeds in the form attached as Exhibit B-3, (d) with respect to the Louisiana Property, a deed in the form attached as Exhibit B-4, (e) with respect to the Michigan

Property, a deed in the form attached as Exhibit B-5, (f) with respect to the New Mexico Properties, deeds in the form attached as Exhibit B-6, (g) with respect to the Elyria Property, a deed in the form attached as Exhibit B-7, and (h) with respect to the Texas Properties, deeds in the form attached as Exhibit B-8, in each case free and clear of all liens, defects of title, and encumbrances, except for (i) the Lease; (ii) real estate taxes, and water and sewer charges, if any, for the current year and subsequent years that are not yet due or payable; (iii) assessments for municipal improvements, if any, for the current year and subsequent years that are not yet due or payable; (iv) zoning ordinances and building codes, to the extent the Properties are in compliance therewith; and (v) any and all other exceptions set forth in the Title Reports which Seller does not agree, and is not required, to cure under Section 6(a) herein and/or to which Buyer waives (or is deemed to have waived) an Objection pursuant to said Section 6(a) (collectively, the “**Permitted Exceptions**”).

Section 6. Examination of Properties.

Seller and Buyer hereby agree as follows:

(a) **Title Examination.** (i) Buyer acknowledges receipt of title commitments for each Real Properties prepared by the Title Insurer (each, a “**Title Report**”; collectively, the “**Title Reports**”), and ALTA/NSPS Surveys (each a “**Survey**”; collectively, the “**Surveys**”), each of which have been ordered by Seller and the cost for which will be prorated in accordance with Section 2(c) of this Agreement. Buyer may order the following with respect to the Properties: zoning reports (collectively, the “**Zoning Reports**”), phase I environmental site assessments (collectively, the “**Environmental Reports**”), and property condition reports (collectively, the “**PCRs**”). Buyer may furnish to Seller prior to the expiration of the Examination Period a statement specifying any defects in the Title Reports and/or the Surveys (the “**Objections**”); provided that Buyer shall not be obligated to object to any Must Cure Items (which Seller shall in all events be obligated to cure at Seller’s sole cost and expense at or prior to Closing). Seller shall notify Buyer within five (5) business days after receipt of the Objections whether Seller will cure the Objections. If Seller does not respond within said five (5) business day period, Seller shall be deemed to have elected not to cure the Objections. If Seller does not agree (or is deemed to not agree) to cure each of the Objections, Buyer shall have the right, by notice given to Seller and Title Insurer within three (3) business days after receipt of Seller’s notice (or within three (3) business days of the expiration of Seller’s five (5) business day response period, if Seller does not respond), either to (a) waive the Objections and proceed with the transactions contemplated by this Agreement, in which event such Objections shall be Permitted Exceptions, or (b) terminate this Agreement, in which event the Earnest Money shall be paid to Buyer and thereafter no party hereto shall have any obligations or liabilities hereunder except those that expressly survive termination of this Agreement. If Buyer fails to elect to terminate this Agreement by notice given to Seller within said three (3) business day period, then Buyer shall be conclusively deemed to have elected to waive the Objections. If Buyer fails to deliver the Objections to Seller prior to the expiration of the Examination Period, then Buyer shall be deemed to have waived its right to object to any defect set forth in the Title Report and Survey; provided that Buyer shall not be obligated to object to any Must Cure Items (which Seller shall in all events be obligated to cure at Seller’s sole cost and expense at or prior to Closing).

(ii) If at any time after Buyer's receipt of the initial Title Reports or Surveys, any update to any Title Report or Survey discloses any additional item which was not disclosed on any version of or update to the applicable Title Report or Survey delivered to Buyer previously (the "**New Exception**"), Buyer shall have a period of five (5) business days from the date of its receipt of such update (the "**New Exception Review Period**") to review and notify Seller in writing of Buyer's approval or disapproval of the New Exception, or if no such notice is provided, such New Exception will be deemed to have been waived, in which event such New Exception shall be a Permitted Exception. If Buyer disapproves of the New Exception, Seller may, in its sole discretion, notify Buyer as to whether it is willing to cure the New Exception. If Seller fails to deliver such notice to Buyer within five (5) business days after the expiration of the New Exception Review Period, Seller shall be deemed to have elected not to cure the New Exception. If Buyer is dissatisfied with Seller's response, or lack thereof, Buyer may, as its exclusive remedy, elect, upon written notice to Seller two (2) business days after receipt of Seller's response (or within two (2) business days of the expiration of Seller's five (5) business day response period, if Seller does not respond), either: (a) to terminate this Agreement in its entirety, in which event this Agreement shall terminate, the Earnest Money shall be paid to Buyer, and thereafter no party hereto shall have any obligations or liabilities hereunder except those that expressly survive termination of this Agreement, (b) terminate this Agreement solely with respect to only the Properties with respect to which the New Exceptions apply, in which event the Purchase Price shall be reduced by the applicable Allocated Purchase Prices attributable to the Properties to which the New Exceptions apply, the Title Insurer shall immediately return to Buyer a portion of Earnest Money attributable to such Properties (in proportion of the applicable Allocated Purchase Prices), and thereafter neither Buyer nor Seller shall have any further rights, obligations or liabilities with respect to the applicable Properties for which this Agreement is terminated, except as otherwise provided herein (provided, however, that Buyer may only partially terminate this Agreement as to individual Properties under this subparagraph (b) if the Allocated Purchase Prices of such affected Properties, taken in the aggregate, does not exceed ten percent (10%) of the total Purchase Price, and in no event may Buyer partially terminate this Agreement under this subparagraph (b) with respect to the AVDC Property), or (c) to waive the New Exception and proceed with the transactions contemplated by this Agreement, in which event such New Exception shall be a Permitted Exception. If Buyer fails to notify Seller of its election to terminate this Agreement in accordance with the foregoing sentence within two (2) business days after receipt of Seller's response (or within two (2) business days of the expiration of Seller's five (5) business day response period, if Seller does not respond), Buyer shall be deemed to have elected to approve and irrevocably waive any objections to the New Exception, in which event such New Exception shall be a Permitted Exception. Notwithstanding the foregoing, Seller shall be required to cure the following, whether or not Buyer objects to the same, at Seller's sole cost and expense (the "**Must Cure Items**"): (w) all monetary liens or encumbrances against the Properties that are dischargeable by payment of a liquidated sum (including, without limitation, all mortgages, financing instruments, mechanics liens and judgments affecting the Properties; (x) all encumbrances against title which are created by or through Seller after the date hereof except if otherwise approved in writing by Buyer in Buyer's sole discretion; (y) any delinquent real property taxes or special assessments affecting any Property; and (z) any matter which Seller elects

to cure (including, without limitation, in the aforementioned Seller response notices, provided that for purpose of defining "Must Cure Items", all matters that Seller elects to endeavor to cure, or to use commercially reasonable efforts to cure, or to elect to request a third party to cure, shall not be included as Must Cure Items, in which case the failure to cure such matters shall be treated solely as a failure of a condition and not as a breach of covenant). Unless consented to in writing by Buyer, notwithstanding anything to the contrary contained herein, in no event shall a Must Cure Item be considered a Permitted Exception, Buyer shall not be required to object to any Must Cure Item and if Seller shall fail to cure a Must Cure Item at or prior to Closing, Buyer shall have the rights set forth in Section 9(b). The Closing Date shall be automatically extended as necessary to accommodate the objection and response periods set forth in this Section 6(a)(ii).

(b) **Examination.** Within two (2) business days after the Effective Date, Seller shall deliver to Buyer all of the materials set forth on Schedule 6(b) attached hereto to the extent such materials are in Seller's possession and are readily available, and should there be any delay in the delivery of such materials by Seller to Buyer, for each day that passes thereafter until all of such materials are delivered to Buyer, the Examination Period shall be extended by one (1) day. Additionally, during the term of this Agreement, Buyer, its agents and designees, shall have the right to enter the Properties during normal business hours for the purposes of inspecting the Properties, and making surveys, mechanical and structural engineering studies, inspecting construction, and conducting any other investigations and inspections as Buyer may require to assess the condition and suitability of the Properties; provided, however, that such activities by or on behalf of Buyer on the Properties shall not materially damage the Properties nor unreasonably interfere with the conduct of business by Seller or any of Seller's tenants; and provided further, however, that Buyer shall (i) indemnify and hold Seller harmless from and against any and all actual claims, judgments, fines, penalties, reasonable out-of-pocket costs, expenses and damages to the extent resulting from damage to the Properties or injury to persons as a result of the activities of Buyer and its agents and designees on the Properties (including, but not limited to, reasonable out-of-pocket attorneys' fees), and (ii) repair any and all damage caused, in whole or in part, by Buyer, which obligations shall survive any termination of this Agreement; except, however, that Buyer shall not be responsible for any repairs necessitated by Buyer's mere discovery of any pre-existing conditions on the Properties during Buyer's diligence inspections except to the extent any such conditions are exacerbated by Buyer. Before entering the Properties, Buyer shall give reasonable written notice to Seller's designated representative(s) of such entry upon the Properties by Buyer, and Seller will have the opportunity to have a representative present during any and all examinations, inspections and/or studies on the Properties.

(c) **Termination; Notice to Proceed.** Buyer shall have the unconditional right, for any reason or no reason, to terminate this Agreement by giving written notice thereof to Seller prior to the expiration of the Examination Period, in which event this Agreement shall become null and void, Buyer shall receive a refund of the Earnest Money, and all rights, liabilities and obligations of the parties under this Agreement shall expire, except as otherwise set forth herein. If Buyer does not provide Seller written notice stating that it waives its right to terminate this Agreement pursuant to this Section 6(c), then this Agreement shall terminate upon the expiration of the Examination Period, Buyer shall

receive a refund of the Earnest Money, and all rights, liabilities and obligations of the parties under this Agreement shall expire, except as otherwise set forth herein. If Buyer provides written notice to Seller prior to the expiration of the Examination Period stating that Buyer waives its right to terminate this Agreement pursuant to this Section 6(c) and elects to proceed with the transaction contemplated by this Agreement, then this Agreement shall continue in full force and effect and Buyer and Seller shall proceed to Closing, subject to and in accordance with the terms and conditions of this Agreement.

(d) **Exclusions.** Except as expressly provided otherwise in the last sentence of this Section 6(d), Buyer also shall have until 5:00 p.m. (Chicago, Illinois time) on the date that is ten (10) days prior to the Closing Date (the “**Exclusion Deadline**”) to exclude one or more Properties (each, an “**Excluded Property**”, and collectively, the “**Excluded Properties**”) from the transaction contemplated by this Agreement, by delivering one or more written notices thereof (each, an “**Exclusion Notice**”) to Seller on or before the Exclusion Deadline, in Buyer’s sole discretion; provided, however, no Property may be excluded from the transaction contemplated by this Agreement pursuant to this Section 6(d) unless Buyer reasonably determines with respect to any such Excluded Property that any of the following exists or occurs: (i) a material violation of applicable laws, rules or regulations; (ii) a material title, survey or zoning defect; (iii) Hazardous Substances are present on the Excluded Property or there is a violation of Environmental Laws; or (iv) a material physical defect in the Improvements. If Buyer does not deliver an Exclusion Notice prior to the Exclusion Deadline, Buyer shall be conclusively deemed to have waived its right to deliver an Exclusion Notice pursuant to this Section 6(d). If Buyer timely delivers an Exclusion Notice, then, as Buyer’s sole and exclusive remedy, this Agreement shall be deemed terminated solely with respect to the applicable Excluded Properties, the Purchase Price shall be reduced by the applicable Allocated Purchase Price attributable to such Excluded Properties, the Title Insurer shall immediately return to Buyer a portion of Earnest Money attributable to such Excluded Properties (in proportion of the applicable Allocated Purchase Price) and thereafter the parties shall have no further rights or obligations under this Agreement with respect to the applicable Excluded Properties except for those that expressly survive termination. Notwithstanding the foregoing, Buyer may only exclude one or more individual Properties under this Section 6(d) if the Allocated Purchase Prices of such Properties, taken in the aggregate, does not exceed ten percent (10%) of the total Purchase Price and in no event may the AVDC Property be an Excluded Property under this Section 6(d).

Section 7. Risk of Loss/Condemnation.

Until Closing, the risk of loss or damage to the Properties shall be borne by Seller. In the event all or any portion of a Property is damaged in any casualty or condemned or taken (or notice of any condemnation or taking is issued), Seller shall give Buyer written notice immediately upon becoming aware thereof, and: (a) with respect to any casualty, if the cost to repair such casualty would exceed five percent (5%) of the Allocated Purchase Price with respect to such Property, and (b) with respect to any condemnation or taking (or notice thereof), the proposed condemnation or taking would result in (i) the loss of legal access to a public right-of way, (ii) the reduction of value in the Properties by more than five percent (5%) of its Allocated Purchase Price, then, in any such case, Buyer may elect to terminate this Agreement either (1) with respect to the entire Agreement

by providing written notice of such termination to Seller within ten (10) business days after Buyer's receipt of notice of such condemnation, taking or damage, upon which termination the Earnest Money shall be returned to Buyer and thereafter neither party hereto shall have any further rights, obligations or liabilities under this Agreement, except as otherwise set forth herein, or (2) with respect to only the affected Property by providing written notice of such termination to Seller within ten (10) business days after Buyer's receipt of notice of such condemnation, taking or damage, upon which termination the Purchase Price shall be reduced by the applicable Allocated Purchase Price attributable to such Property, the Title Insurer shall immediately return to Buyer a portion of Earnest Money attributable to such applicable Property (comparing the applicable Property's Allocated Purchase Price against the total Purchase Price), and thereafter neither party hereto shall have any further rights, obligations or liabilities under this Agreement with respect to such Property, except as otherwise set forth herein; provided, however, that Buyer may only partially terminate this Agreement as to individual Properties under this subparagraph (2) if the Allocated Purchase Prices of such affected Properties, taken in the aggregate, does not exceed ten percent (10%) of the total Purchase Price, and in no event may Buyer partially terminate this Agreement under this subparagraph (2) with respect to the AVDC Property. Subject to the foregoing, with respect to any condemnation or taking (or any notice thereof), if Buyer does not elect to cancel this Agreement, there shall be no abatement of the Purchase Price and Seller shall assign to Buyer, at the Closing, the rights of Seller to the awards, if any, for the condemnation or taking, and Buyer shall be entitled to receive and keep all such awards to be applied in accordance with the terms of the Lease. Subject to the foregoing, with respect to a casualty, if Buyer does not elect to terminate this Agreement or does not have the right to terminate this Agreement as aforesaid, there shall be no abatement of the Purchase Price and Seller shall assign to Buyer, at the Closing, the rights of Seller to the proceeds under Seller's insurance policies covering such Properties with respect to such damage or destruction (or pay to Buyer any such proceeds received prior to Closing), with Seller responsible for payment of any deductible and/or uninsured amount with respect thereto, and Buyer shall be entitled to receive and keep any monies received from such insurance policies which shall be applied in accordance with the terms of the Lease. The Closing Date shall be automatically extended as necessary to accommodate the determination periods set forth in this Section 7.

Section 8. Earnest Money Disbursement.

The Earnest Money shall be held by the Title Insurer, in trust, and disposed of only in accordance with the following provisions:

- (a) The Title Insurer shall invest the Earnest Money in a money market account reasonably satisfactory to Buyer at Buyer's sole cost and expense, and shall promptly provide Buyer and Seller with confirmation of the investments made, including the name and address of the bank where such account is maintained and the account number thereof. The Title Insurer shall not commingle the Earnest Money with any funds of the Title Insurer or others.
- (b) If the Closing occurs, the Title Insurer shall deliver the Earnest Money to, or upon the instructions of, Seller and Buyer upon the Closing. If for any reason the Closing does not occur, the Title Insurer shall deliver the Earnest Money to Seller or Buyer only upon receipt of a written demand therefor from such party, subject to the following provisions

of this Section 8(b). Subject to the last sentence of this Section 8(b), if for any reason the Closing does not occur and either party makes a written demand (the “**Demand**”) upon the Title Insurer for payment of the Earnest Money, the Title Insurer shall give written notice to the other party of the Demand within one (1) business day after receipt of the Demand. If the Title Insurer does not receive a written objection from the other party to the proposed payment within five (5) business days after the giving of such notice by Title Insurer, the Title Insurer is hereby authorized to make the payment set forth in the Demand. If the Title Insurer does receive such written objection within such period, the Title Insurer shall continue to hold such amount until otherwise directed by written instructions signed by Seller and Buyer or a final judgment of a court. Notwithstanding the foregoing provisions of this Section 8(b) if Buyer delivers a notice to Title Insurer on or prior to the expiration of the Examination Period that Buyer has terminated this Agreement, then Title Insurer shall immediately return the Earnest Money to Buyer without the necessity of delivering any notice to, or receiving any notice from Seller.

(c) Buyer and Seller acknowledge that the Title Insurer is acting solely as a stakeholder at their request and for their convenience, that the Title Insurer shall not be deemed to be the agent of any of Buyer or Seller, and that the Title Insurer shall not be liable to any of Buyer or Seller for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement, but shall be liable for its negligent acts and for any liabilities (including reasonable attorneys’ fees, expenses and disbursements) incurred by Seller or Buyer resulting from the Title Insurer’s mistake of law respecting the Title Insurer scope or nature of its duties. Seller and Buyer shall jointly and severally indemnify and hold the Title Insurer harmless from and against all liabilities (including reasonable attorneys’ fees, expenses and disbursements) incurred in connection with the performance of the Title Insurer’s duties hereunder, except with respect to actions or omissions taken or made by the Title Insurer in bad faith, in disregard of this Agreement or involving negligence on the part of the Title Insurer. The Title Insurer has executed this Agreement in the place indicated on the signature page hereof in order to confirm that the Title Insurer has received and shall hold the Earnest Money in escrow, and shall disburse the Earnest Money pursuant to the provisions of this Section 8.

Section 9. Default; Breach of Representation.

(a) In the event Buyer fails to consummate the Closing on the Closing Date, for any reason other than Seller’s default or the permitted termination of this Agreement by either Seller or Buyer as provided for in this Agreement, then Seller may, upon five (5) days’ notice to Buyer, if such failure is not cured within such five (5) day period, as its sole and exclusive remedy, terminate this Agreement by notice to Buyer, and in such event Seller shall be entitled to immediately receive all of the Earnest Money as liquidated damages. Upon such termination, and receipt by Seller of all of the Earnest Money, neither Buyer nor Seller shall have any further rights, obligations or liabilities hereunder, except as otherwise provided herein. Seller and Buyer agree that it is difficult to determine, with any degree of certainty, the loss which Seller would incur in the event of Buyer’s default in its obligation to consummate the Closing on the Closing Date, and the parties have agreed that the amount of the Earnest Money represents a reasonable estimate of such loss and is intended as a liquidated damages provision.

/s/ JR

Seller's Initials

/s/ MR

Buyer's Initials

(b) In the event Seller should breach, in any material respect, any of its covenants, representations or warranties contained in this Agreement, or if Seller should fail to consummate the Closing on the Closing Date for any reason other than Buyer's default, Buyer may, upon five (5) days' notice to Seller, if such breach or failure is not cured within such five (5) day period, as its sole and exclusive remedy, either (i) waive such default or failure and proceed to Closing in accordance with the terms and provisions hereof, (ii) terminate this Agreement in its entirety by notice to Seller, in which event the Title Insurer shall return immediately the Earnest Money to Buyer, and Seller shall reimburse Buyer for Buyer's actual out-of-pocket expenses incurred with respect to its negotiation of this Agreement and due diligence with respect to the Properties, including but not limited to environmental and engineering consultants' fees, legal fees, and financing deposits, not to exceed an aggregate amount of Four Hundred Thousand and 00/100 Dollars (\$400,000.00), and thereafter neither Buyer nor Seller shall have any further rights, obligations or liabilities hereunder, except as otherwise provided herein, (iii) terminate this Agreement by notice to Seller solely with respect to only the Properties with respect to which the applicable breach or default occurred, in which event the Purchase Price shall be reduced by the applicable Allocated Purchase Prices attributable to the Properties to which the applicable breach or default occurred, the Title Insurer shall immediately return to Buyer a portion of Earnest Money attributable to such Properties (in proportion of the applicable Allocated Purchase Prices), and Seller shall reimburse Buyer for Buyer's actual out-of-pocket expenses incurred with respect to its due diligence with respect to such Properties, including but not limited to environmental and engineering consultants' fees, legal fees, and financing deposits, not to exceed One Hundred Thousand and 00/100 Dollars (\$100,000.00) with respect to the AVDC Property, and Twenty Five Thousand and 00/100 Dollars (\$25,000.00) with respect to all other Properties that are not the AVDC Property, up to an aggregate amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00), and thereafter neither Buyer nor Seller shall have any further rights, obligations or liabilities with respect to the applicable Properties for which this Agreement is terminated, except as otherwise provided herein (provided, however, that Buyer may only partially terminate this Agreement as to individual Properties under this subparagraph (iii) if the Allocated Purchase Prices of such affected Properties, taken in the aggregate, does not exceed ten percent (10%) of the total Purchase Price, and in no event may Buyer partially terminate this Agreement under this subparagraph (iii) with respect to the AVDC Property), or (iv) enforce specific performance of Seller's obligations hereunder. This subparagraph (b) shall survive the Closing or the earlier termination of this Agreement.

(c) As a condition precedent to Buyer exercising any right it may have to bring an action for specific performance hereunder, Buyer must commence such an action within sixty (60) days after Buyer becomes aware of the occurrence of Seller's default. Buyer agrees that its failure to timely commence such an action for specific performance within such sixty (60) day period shall be deemed a waiver by it of Buyer's right to commence an action for specific performance.

(d) Notwithstanding Subparagraphs 9(a) and 9(b) hereof, in no event shall the provisions of Subparagraphs 9(a) and 9(b) limit the damages recoverable by either party against the other party due to the other party's obligation to indemnify such party in accordance with the express provisions of this Agreement. This subparagraph (d) shall survive the Closing or the earlier termination of this Agreement.

(e) Notwithstanding anything to the contrary in this Agreement, in the event of a default of Seller hereunder which makes specific performance unavailable, Buyer shall, in addition to the foregoing remedies, be permitted to pursue any and all rights and remedies available to Buyer at law or in equity. This subparagraph (e) shall survive the Closing or the earlier termination of this Agreement.

(f) All representations and warranties in this Agreement, and covenants required to be performed under this Agreement prior to Closing, shall survive the Closing for a period of nine (9) months after the Closing (the "**Survival Period**"). Any right of action for the breach of any representation, warranty or covenant contained herein shall not merge with the deeds delivered at the Closing but shall survive the Closing for the Survival Period. Seller and Buyer agree that, following the Closing, each shall be liable for the direct and actual, but not special, indirect, consequential or punitive, damages resulting from any breach of its representations, warranties or covenants expressly set forth in this Agreement; provided, however, that: (i) following Closing, the total liability of Seller for all such breaches of its representations and warranties under this Agreement shall not, in the aggregate, exceed three percent (3%) of the Purchase Price (the "**Claim Cap**"); and (ii) following Closing, the total liability of Buyer for all such breaches shall not, in the aggregate, exceed the Claim Cap. Buyer further agrees that, following the Closing, no claim may or shall be made for any alleged breach of any representations or warranties made by Seller under or relating to this Agreement unless the amount of such claim or claims, individually or in the aggregate, exceeds One Hundred Thousand and 00/100 Dollars (\$100,000.00) (in which event the full amount of such valid claims against Seller shall be actionable up to, but not in excess of, the Claim Cap). In the event that Seller breaches any representation or warranty contained in this Agreement, in any material respect, and Buyer had actual knowledge of such breach on or prior to the Closing Date, Buyer shall be deemed to have waived any right of recovery, and Seller shall not have any liability to Buyer in connection therewith.

Section 10. Closing.

Subject to the terms and conditions of this Agreement, the closing of the transaction hereunder (the "**Closing Date**") shall occur on the date that is fifteen (15) days after the expiration of the Examination Period. The Closing shall consist of the execution and delivery of documents by Seller, Buyer, and the Tenant as set forth below, and delivery by Buyer to Seller of the Purchase Price in accordance with the terms of this Agreement. Seller and Tenant, as applicable, shall deliver to Buyer at Closing the following executed documents:

(a) With respect to each of the California Properties, an original grant deed in the form attached hereto as **Exhibit B-1**, executed by the applicable Seller Entity and conveying the

California Properties to Buyer (or its designee or permitted assignee) subject only to the Permitted Exceptions;

(b) With respect to the Colorado Property, an original deed in the form attached hereto as Exhibit B-2, executed by the applicable Seller Entity and conveying the Colorado Property to Buyer (or its designee or permitted assignee) subject only to the Permitted Exceptions;

(c) With respect to each of the Florida Properties, an original deed in the form attached hereto as Exhibit B-3, executed by the applicable Seller Entity and conveying the Florida Properties to Buyer (or its designee or permitted assignee) subject only to the Permitted Exceptions;

(d) With respect to the Louisiana Property, an original deed in the form attached hereto as Exhibit B-4, executed by the applicable Seller Entity and conveying the Louisiana Property to Buyer (or its designee or permitted assignee) subject only to the Permitted Exceptions;

(e) With respect to the Michigan Property, an original deed in the form attached hereto as Exhibit B-5, executed by the applicable Seller Entity and conveying the Michigan Property to Buyer (or its designee or permitted assignee) subject only to the Permitted Exceptions;

(f) With respect to each of the New Mexico Properties, an original deed in the form attached hereto as Exhibit B-6, executed by the applicable Seller Entity and conveying the New Mexico Properties to Buyer (or its designee or permitted assignee) subject only to the Permitted Exceptions;

(g) With respect to the Elyria Property, an original deed in the form attached hereto as Exhibit B-7, executed by the applicable Seller Entity and conveying the Elyria Property to Buyer (or its designee or permitted assignee) subject only to the Permitted Exceptions;

(h) With respect to each of the Texas Properties, an original deed in the form attached hereto as Exhibit B-8, executed by the applicable Seller Entity and conveying the Texas Properties to Buyer (or its designee or permitted assignee) subject only to the Permitted Exceptions (the deeds in the foregoing subparagraphs (a) through (h), collectively, the "**Deeds**");

(i) two (2) originals of (i) the Lease, executed by Tenant, as tenant, and (ii) the Guaranty, executed by Guarantor, as guarantor;

(j) twenty-eight (28) originals of the memorandum of Lease in the form contemplated in the Lease, as modified by Section 36 of this Agreement (each, a **Memorandum**; together, the "**Memoranda**") for recordation in the applicable county records;

(k) one (1) original Assignment of Intangible Property in the form of Exhibit D attached hereto, with respect to each Property, executed by each applicable Seller Entity

conveying the Intangible Property to the applicable Buyer (or its designee or permitted assignee) (collectively, the **"Assignments of Intangible Property"**);

- (l) a settlement statement setting forth the Purchase Price, all prorations and other adjustments to be made pursuant to the terms hereof, and the funds required for Closing as contemplated hereunder;
- (m) all transfer tax statements, declarations, residency certifications, filings, and notices as may be necessary or appropriate for purposes of recordation of each applicable Deed (including, without limitation, any water reading, water bill, certificate (including, without limitation, water certificates, certificates of sewer compliance, and certificates of building compliance), inspection report, evidence of required repairs, clearance letter, release, the Michigan Real Estate Transfer Tax Valuation Affidavit, evidence of payment of all sums owed to any government, agency, or municipality, and any other similar certificate, payment or deliverable customarily submitted or obtained in the jurisdiction in which any portion of the Property is located in connection with sales of property similar to the Property). Seller shall coordinate any such required inspections, readings, and other actions. In the event any state, county, local or municipal agency requires any holdback in connection therewith, the required amount shall be set aside from the Purchase Price and held in escrow with Title Insurer in accordance with such Title Insurer's customary instructions and procedures in such jurisdiction;
- (n) good standing certificates and corporate resolutions or member or partner consents, as applicable, and such other organization or authority documents as reasonably requested by the Title Insurer;
- (o) a FIRPTA Affidavit from each Seller Entity in the form of Exhibit E attached hereto;
- (p) with respect to each Texas Property, an affidavit in the form attached hereto as Exhibit H, each executed by the applicable Seller Entity;
- (q) with respect to each Property that is not a Texas Property, an affidavit in the form attached hereto as Exhibit E, each executed by the applicable Seller Entity;
- (r) an SNDA (as defined in the Lease) in a form requested by Buyer in accordance with the Lease;
- (s) to the extent received, the Estoppels (as hereinafter defined);
- (t) one (1) duly executed original of the Columbus DC Lease Amendment;
- (u) with respect to each California Property, a California Form 593, duly executed by Seller;
- (v) such additional documents, tax certificates, withholding forms, instructions or other items as may be necessary or appropriate to comply with the provisions of this Agreement and to effect the transactions contemplated hereby; and

(w) at Closing, Seller shall direct and pay all of its sales proceeds received hereunder (net of reasonable, actual, out-of-pocket transaction costs incurred by Seller in connection with this Agreement) first to pay off the AVDC Synthetic Lease and second to pay the remainder of such proceeds to PNC Bank, National Association, as Administrative Agent under Guarantor's Credit Facility, to be applied as a pay down of Guarantor's revolving loans outstanding thereunder (each of which obligations shall survive the Closing) (such payments, collectively, the "**Prepayment**").

At Closing, Buyer shall instruct the Title Insurer to deliver the Earnest Money to Seller which shall be applied to the Purchase Price, shall deliver the balance of the Purchase Price to Seller and shall execute and deliver executed counterparts (as applicable) of the closing documents referenced in Sections 10(i), (j), (k), (l), and (t) to the extent applicable. In addition, for each California Property, Buyer shall complete and deliver to the Title Insurer a duly executed Preliminary Change of Ownership Report ("**PCOR**"). The Closing shall be held through a customary, New York style escrow arrangement between the parties and the Title Insurer, or such other place or manner as the parties hereto may mutually agree.

Section 11. Seller's Representations.

Seller represents and warrants to Buyer, effective as of the Effective Date and as of the Closing Date, as follows:

(a) BLS Seller is duly organized (or formed), validly existing and in good standing under the laws of the State of Ohio. PNS Seller is duly organized (or formed), validly existing and in good standing under the laws of the State of California. AVDC Seller is duly organized (or formed), validly existing and in good standing under the laws of the State of Ohio. Seller is authorized to consummate the transaction set forth herein and fulfill all of its respective obligations hereunder and under all closing documents to be executed by Seller, and Seller has all necessary power to execute and deliver this Agreement and all closing documents to be executed by Seller, and to perform all of Seller's obligations hereunder and thereunder. Neither the execution and delivery of this Agreement and all closing documents to be executed by Seller, nor the performance of the obligations of Seller hereunder or thereunder will result in the violation of any law or any provision of the organizational documents of or will conflict with any order or decree of any court or governmental instrumentality of any nature by which Seller or any Property is bound;

(b) Seller has not received any written notice of any current or pending litigation, condemnation proceeding or tax appeals affecting Seller or the Properties, and Seller has no knowledge of any pending litigation, condemnation proceeding or tax appeals against Seller or the Properties; Seller has not initiated, nor is Seller participating in, any action for a change or modification in the current subdivision, site plan, zoning or other land use permits for the Properties and Seller has no knowledge that any Property may be rezoned;

(c) (i) There are no actions, suits or other proceedings of any kind pending or, to the best of Seller's knowledge, threatened against Seller or the Properties which, if determined adversely, would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Seller to perform its obligations hereunder; and (ii) Seller has

not received any written notice of any current or pending environmental investigations against the Properties and Seller has no actual knowledge of any pending environmental investigations against the Properties;

(d) Seller has not entered into any contracts, subcontracts or agreements, including but not limited to any brokerage agreements, affecting any Property which will be binding upon Buyer after the Closing;

(e) Except for defaults cured on or before the date hereof, Seller has not received any written notice of default under the terms of any of the contracts affecting or related to the Property, and, to Seller's knowledge, there are no defaults under the contracts affecting or related to the Property;

(f) Except for violations cured or remedied on or before the date hereof, Seller has not received any written notice from (or delivered any notice to) any governmental authority regarding any violation of any law applicable to the Properties and Seller has no knowledge of any such violations;

(g) Other than the Rally's Lease and the Wendy's Lease, there are no occupancy rights, leases, subleases, ground leases or tenancies affecting the Properties;

(h) No Seller Entity is a "foreign person" under the Foreign Investment in Real Property Tax Act of 1980 ("**FIRPTA**") and upon consummation of the transaction contemplated hereby, Buyer will not be required to withhold from the Purchase Price any withholding tax;

(i) There are no pending or, to Seller's knowledge, threatened condemnation proceedings affecting the Properties, and Seller has not received any written notice that there is any pending or threatened condemnation of all or any part of the Properties;

(j) (1) To Seller's knowledge, no Hazardous Substances have been generated, stored, released, or disposed of on or about the Properties in violation of any law, rule or regulation applicable to the Properties which regulates or controls matters relating to the environment or public health or safety (collectively, "**Environmental Laws**"); and (2) Seller has not received any written notice from (nor delivered any notice to) any federal, state, county, municipal or other governmental department, agency or authority concerning any petroleum product or other Hazardous Substance discharge or seepage;

(k) There are no rights of first refusal, rights of first offer, purchase options or similar purchase rights with respect to the Properties;

(l) Seller is not acting on behalf of (a) an "employee benefit plan" (as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974 ("**ERISA**")) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975(e) of the Internal Revenue Code of 1986 (the "**Code**") that is subject to Section 4975 of the Code (each of the foregoing a "**Plan**"), (c) an entity or account the assets of which constitute "plan assets" of one or more such Plans within the meaning of Department of Labor Regulation 29 CFR

Section 2510.3-101, as modified by Section 3(42) of ERISA or (d) a “governmental plan” within the meaning of Section 3(32) of ERISA;

(m) Neither Seller, nor any of Seller’s affiliates is in violation of any laws relating to terrorism, money laundering or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Action of 2001, Public Law 107-56 and Executive Order No. 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) (the “**Executive Order**”) (collectively, the “**Anti-Money Laundering and Anti-Terrorism Laws**”). Neither Seller, nor any of Seller’s affiliates, is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons or entities that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time. Neither Seller, nor any of Seller’s affiliates, nor, without inquiry, any of its brokers or other agents, in any capacity in connection with the sale of the Properties (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists referenced above, (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws. Neither Seller, nor any person controlling or controlled by Seller, is a country, territory, individual or entity named on a Government List, and the monies used in connection with this Agreement and amounts committed with respect thereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a Government List or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7));

(n) Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally;

(o) Each Seller Entity has employees, but following the Closing, Buyer shall have no obligation to employ or continue to employ any individual employed by any Seller Entity or at the Properties, and Buyer shall not incur any costs, expenses, liabilities, or obligations due to the fact that each Seller Entity has employees (Seller to indemnify and hold Buyer harmless for the same, which covenant shall survive the Closing). There are no employment, collective bargaining or similar agreements or arrangements with Seller, or with respect to the Properties, which will be binding on Buyer after the Closing;

(p) Except for items being paid by Seller at Closing or prorated at Closing, there are no outstanding accounts payable or unpaid debts relating to the Properties that would be binding on Buyer or the Properties, including, without limitation, any unpaid charges, debts, liabilities, claims or obligations arising from the construction, occupancy, ownership, use or operation of the Properties, which could give rise to any mechanic's or materialmen's or other statutory liens against any portion of the Properties; and

(q) Terms such as "to Seller's knowledge," "to the best of Seller's knowledge" or like phrases mean the knowledge of Jonathan Ramsden, the individual in Seller's organization charged with responsibility for the Properties, the Lease and the matters otherwise addressed in the representations and warranties contained herein; provided however, that so qualifying Seller's knowledge shall in no event give rise to any personal liability on the part of Seller's property manager, any officer, director or employee of Seller or Big Lots, Inc., on account of any breach of any representation or warranty made by Seller herein.

(r) As to each Seller Entity, the portion of the Properties located in Florida owned by such Seller Entity does not constitute fifty percent (50%) or more of the assets of the applicable Seller Entity.

Section 12. Buyer's Representations.

Buyer represents and warrants to Seller effective as of the Effective Date and as of the Closing Date, as follows:

(a) Buyer is duly formed, validly existing and in good standing under the laws of Delaware, is authorized to consummate the transaction set forth herein and fulfill all of its obligations hereunder and under all closing documents to be executed by Buyer, and has all necessary power to execute and deliver this Agreement and all closing documents to be executed by Buyer, and to perform all of Buyer's obligations hereunder and thereunder. This Agreement and all closing documents to be executed by Buyer have been duly authorized by all requisite corporate or other required action on the part of Buyer and are the valid and legally binding obligation of Buyer, enforceable in accordance with their respective terms. Neither the execution and delivery of this Agreement and all closing documents to be executed by Buyer, nor the performance of the obligations of Buyer hereunder or thereunder, will result in the violation of any law or any provision of the organizational documents of Buyer or will conflict with any order or decree of any court or governmental instrumentality of any nature by which Buyer is bound;

(b) No petition has been filed by or against Buyer under the Federal Bankruptcy Code or any similar State or Federal Law;

(c) Neither Buyer nor, to Buyer's actual knowledge, its affiliates, is in violation of any Anti-Money Laundering and Anti-Terrorism Laws. Neither Buyer nor, to Buyer's actual knowledge, its affiliates, is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons or entities that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of

State, or other U.S. government agencies, all as may be amended from time to time. Neither Buyer nor, to Buyer's actual knowledge, its affiliates or, without inquiry, any of its brokers or other agents, in any capacity in connection with the sale of the Properties (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists referenced above, (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws. Neither Buyer, nor any person controlling or controlled by Buyer, is a country, territory, individual or entity named on a Government List, and the monies used in connection with this Agreement and amounts committed with respect thereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a Government List or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7));

(d) Buyer is not, and is not acting on behalf of, (a) a Plan, (b) an entity or account the assets of which constitute "plan assets" of one or more such Plans within the meaning of Department of Labor Regulation 29 CFR Section 2510.3-101, as modified by Section 3(42) of ERISA or (c) a "governmental plan" within the meaning of Section 3(32) of ERISA;

(e) Buyer has not incurred indebtedness in excess of eighty percent (80%) of the Purchase Price in connection with funding the Purchase Price;

(f) If Buyer is a disregarded entity for federal income tax purposes, Buyer, the most immediate parent company of Buyer that is not a disregarded entity for federal income tax purposes and owns the entire equity interest of Buyer (directly or indirectly) ("**Buyer's Non-Disregarded Parent**"), and any subsidiary of Buyer's Non-Disregarded Parent that owns the entire equity interest in Buyer (directly or indirectly), have not incurred indebtedness, collectively, in excess of eighty percent (80%) of the Purchase Price in connection with funding the Purchase Price or making capital contributions directly or indirectly to Buyer to fund the Purchase Price, as applicable; and

(g) For purposes of this Agreement, terms such as "to Buyer's knowledge", "to the best of Buyer's knowledge", or like phrases mean the actual knowledge of Michael Reiter, with no duty of inquiry, an individual in Buyer's organization expected to have knowledge of the matters set forth in this Agreement; provided, however, that so qualifying Buyer's knowledge shall in no event give rise to any personal liability on the part of such individual (or any other officer, director or employee of Buyer or its affiliates) on account of any breach of any representation, warranty or covenant by Buyer herein.

Section 13. Conditions to Buyer's Obligations.

Buyer's obligation to pay the Purchase Price, accept title to the Properties and proceed to Closing on the terms and conditions of this Agreement shall be subject to satisfaction of the following conditions precedent on and as of the Closing Date:

- (a) Seller shall deliver or cause to be delivered to Buyer on or before the Closing Date the documents set forth in Section 10 above;
- (b) Each of the representations and warranties of Seller contained in this Agreement shall have been true when made and shall be true in all material respects at and as of the Closing Date as if such representations and warranties were made at and as of the Closing, and Seller shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing;
- (c) Buyer shall receive from the Title Insurer current ALTA owner's title insurance policies, or irrevocable and unconditional binders to issue the same, with extended coverage and the ALTA 15 Endorsement, for each Real Property in the amount of the applicable Allocated Purchase Price, dated, or updated to, no earlier than the date of the Closing, insuring, at its ordinary premium rates, Buyer's good and marketable title in fee simple to the Real Property and otherwise in such form approved by Buyer pursuant to Section 6 hereof and subject only to the Permitted Exceptions (the "**Title Policy**");
- (d) On or before the date that is three (3) days prior to the expiration of the Examination Period, Seller shall have delivered to Buyer estoppel certificates in the form provided by Buyer (and reasonably acceptable to Seller) from any parties to material declarations, development agreements, and/or reciprocal and/or operating easement agreements affecting the Properties (collectively, the "**Required Estoppels**"). The Required Estoppels shall not show any default by Seller, BCC, or any of their affiliates (including, without limitation, Tenant) or any information that would be reasonably expected to have a material adverse effect on the ownership, use, occupancy maintenance, or value of the Properties; and
- (e) From the Effective Date until Closing, no material adverse change shall have occurred with respect to the Properties or the Tenant.

Buyer may at any time or times, at its election, waive any of the conditions to its obligations under this Agreement but any such waiver shall be effective only if contained in a writing signed by Buyer. If all of the above conditions have not been satisfied, or waived in writing by Buyer, on or prior to the Closing Date, then Buyer shall have the right to terminate this Agreement in its entirety, and upon such termination the Earnest Money shall be refunded to Buyer and thereafter neither Buyer nor Seller shall have any further rights, obligations or liabilities hereunder, except as otherwise set forth herein. If the failure of any condition precedent to Buyer's obligations set forth in this Section 13 arises as a result of a default by Seller under this Agreement, Buyer shall also have the remedies available to Buyer in Section 9(b).

Section 14. Conditions to Seller's Obligations.

Seller's obligation to deliver title to the Properties and proceed to Closing on the terms and conditions of this Agreement shall be subject to satisfaction of the following conditions precedent on and as of the Closing Date:

(a) Buyer shall deliver to Seller upon the Closing the remainder of the Purchase Price as adjusted pursuant to Section 2 hereof; and

(b) The representations and warranties of Buyer contained in this Agreement shall have been true when made and shall be true in all material respects at and as of the Closing Date as if such representations and warranties were made at and as of the Closing, and Buyer shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing.

If all of the above conditions have not been satisfied or waived in writing by Seller on or prior to the Closing Date, then Seller shall have the right to terminate this Agreement, and upon such termination the Earnest Money shall be refunded to Buyer and neither Buyer nor Seller shall have any further rights, obligations or liabilities hereunder, except as otherwise set forth herein. In the event of the failure of the condition precedent to Seller's obligations set forth in Section 14(a), Seller shall have the remedies available to Seller in Section 9(a).

Section 15. Notices.

All notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given on the date: (i) delivered in person, (ii) deposited in the United States mail, registered or certified, return receipt requested, (iii) delivery via electronic mail to the addresses set out in Section 1 or (iv) deposited with a nationally recognized overnight courier, to the addresses set out in Section 1. Such notices shall be deemed effective upon receipt, provided, however, as to item (iii), receipt occurs on or before 6:00 p.m. EST on a business day, otherwise, such notice shall be deemed to have been received on the next succeeding business day. Any address or name specified in Section 1 may be changed by notice given to the addressee by the other party in accordance with this Section 15. Anything to the contrary notwithstanding, if notice cannot be delivered because of a changed address of which no notice was given as provided above, or because of rejection or refusal to accept any notice, then receipt of such notice shall be deemed to be as of the date of inability to deliver or rejection or refusal to accept. Any notice to be given by any party may be given by the counsel for such party.

Section 16. Seller Pre-Closing Covenants.

From and after the Effective Date and until Closing, Seller agrees that it shall:

(a) continue to operate the Properties in materially the same manner in which each Seller Entity has previously operated the Properties;

(b) subject to Section 7 hereof and subject to reasonable wear and tear and damage from fire or other casualty, maintain the Properties in the same (or better) condition as exists on the date hereof;

- (c) keep the Property insured for no less than full replacement cost thereof subject to such deductibles as are currently in place with respect to such Property;
- (d) not (i) enter into, amend, modify, terminate or grant any waiver or approval under any leases, licenses or other occupancy agreements, or any other contracts that would be binding on Buyer after Closing, (ii) transfer, sell or otherwise dispose of any Property, except for the replacement of obsolete personal property in the ordinary course of business, nor (iii) initiate or consent to any zoning reclassification or other change to the zoning, site plan, special use permit or other land use entitlement with respect to the Property, without, in each instance, obtaining the prior written consent of Buyer in its sole and absolute discretion;
- (e) request the Required Estoppels (if applicable), and also request any other estoppel certificates in the form provided by Buyer (and reasonably acceptable to Seller) with respect to any other declarations, development agreements, and/or reciprocal and/or operating easement agreements affecting the Properties (if applicable), from all applicable parties within two (2) business days following the Effective Date, and thereafter shall use commercially reasonable efforts to obtain the same; and
- (f) promptly inform Buyer in writing of (i) the receipt of a written notice from any applicable governmental authority having jurisdiction of any purported violation of law with respect to the Properties and/or any casualty or condemnation with respect to the Properties or (ii) any other material event which would reasonably be expected to adversely affect the ownership, use, occupancy or maintenance of the Properties, whether insured or not.

Section 17. Financial Strength Parameters.

Pursuant to Section 10 of this Agreement, at Closing, Seller will pay down or payoff, as applicable (or cause to be paid down or paid off, as applicable), with the proceeds generated by the sale of the Properties pursuant to this Agreement, first, the AVDC Synthetic Lease and, second, a portion of the revolving loans outstanding under Guarantor's Credit Facility, in the amount of the Prepayment; provided that nothing in this Section 17 (a) shall require a permanent reduction of the commitments under the Guarantor's Credit Facility or (b) except as set forth in the next sentence, in any way restrict Guarantor's ability to make borrowings under Guarantor's Credit Facility following the Closing Date. Until the six month anniversary of the Closing Date (the "Condition End Date"), at any time that Availability as of the end of the most recently ended fiscal quarter for which a 10-Q or 10-K, as applicable, has been filed is less than \$500 million, Guarantor will not make any new drawings of revolving loans under Guarantor's Credit Facility for any purpose other than working capital, general corporate, operational requirements or capital expenditures, as determined by Guarantor in its commercially reasonable discretion, until such earlier time as (x) the time that Availability exceeds \$500 million as of the end of any subsequent fiscal quarter for which a 10-Q or 10-K has been filed or (y) the Condition End Date. For purposes hereof, "Availability" means "Availability" as defined in Guarantor's Credit Facility or any substantially similar term in any replacement to Guarantor's Credit Facility and after giving pro forma effect to the Prepayment at any time following the end of the applicable fiscal quarter-end

if Availability does not reflect such Prepayment as if such Prepayment occurred during the applicable fiscal quarter. This Section 17 shall survive the Closing.

Section 18. Entire Agreement.

This Agreement constitutes the sole and entire agreement among the parties hereto with regard to the subject matter hereof, and no modification of this Agreement shall be binding unless in writing and signed by Buyer and Seller. No prior agreement or understanding pertaining to the subject matter hereof (including, without limitation, any letter of intent executed prior to this Agreement) shall be valid or of any force or effect from and after the date hereof.

Section 19. No Representations or Warranties.

Buyer hereby acknowledges, understands and agrees that, as of the earlier of the expiration of the Examination Period or Buyer's waiver of such right, it will have had an opportunity to inspect the Properties as set forth in Section 6 herein, and except as set forth in this Agreement and the other documents executed and delivered by Seller or its affiliates at Closing (the "Closing Documents"), the Properties shall be conveyed at Closing to Buyer in "as-is" condition with no representation or warranties whatsoever.

Section 20. Applicable Law.

This Agreement shall be construed under the laws of the State of Illinois, without giving effect to any conflict of laws or principles.

Section 21. No Brokers.

Buyer and Seller each hereby represent that there are no brokers involved or that have a right to proceeds in this transaction. Seller and Buyer each hereby agree to indemnify and hold the other harmless from all loss, cost, damage or expense (including reasonable attorneys' fees at both trial and appellate levels) incurred by the other as a result of any claim arising out of the acts of the indemnifying party (or others on its behalf) for a commission, finder's fee or similar compensation made by any broker, finder or any party who claims to have dealt with such party. The representations, warranties and indemnity obligations contained in this Section 21 shall survive the Closing or the earlier termination of this Agreement.

Section 22. Attorneys' Fees.

In any action between Buyer and Seller as a result of failure to perform or a default under this Agreement, the prevailing party shall be entitled to recover from the other party, and the other party shall pay to the prevailing party, the prevailing party's reasonable attorneys' fees and disbursements and court costs incurred in such action.

Section 23. Exclusivity.

Prior to the Closing or the earlier termination of this Agreement, Seller will not show, market, offer, or negotiate to sell or obtain a loan with respect to the Properties or any portion

thereof or any direct or indirect interest therein to any party other than Buyer, nor will Seller conduct discussions with any third party with respect to the same.

Section 24. No Recording.

Buyer may not record this Agreement or any memorandum of short form hereof.

Section 25. Computation of Time.

The time in which any act under this Agreement is to be done shall be computed by excluding the first day and including the last day. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday. Unless preceded by the word "business," the word "day" shall mean a calendar day. The phrase "business day" or "business days" shall have the meaning set forth in Section 1. Time is of the essence with respect to this Agreement and the transactions contemplated hereby.

Section 26. Counterparts; Electronic Signatures.

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other party. Signatures to this Agreement, any amendment hereof and any notice given hereunder, delivered electronically via DocuSign, .pdf, .jpeg, .TIF, .TIFF or similar electronic format shall be deemed an original signature and fully effective as such for all purposes. Each party agrees to deliver promptly an executed original of this Agreement (and any amendment hereto) with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement (or any amendment hereto), it being expressly agreed that each party to this Agreement shall be bound by its own electronically transmitted signature and shall accept the electronically transmitted signature of the other party to this Agreement.

Section 27. Binding Effect.

This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

Section 28. No Offer.

This Agreement is of no force or effect unless it is signed by Seller and Buyer, and a signed copy of this Agreement delivered by Seller to Buyer. The mailing, delivery or negotiation of this Agreement by Seller or Buyer or any agent or attorney of Seller or Buyer prior to the execution and delivery of this Agreement as set forth in this clause shall not be deemed an offer by Seller or Buyer to enter into this Agreement, whether on the terms contained in this Agreement or on any other terms.

Section 29. Waiver of Trial by Jury.

THE RESPECTIVE PARTIES HERETO SHALL AND HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR FOR THE ENFORCEMENT OF ANY REMEDY GRANTED IN THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY SELLER AND BUYER, EACH OF WHOM HEREBY ACKNOWLEDGES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. SELLER AND BUYER EACH FURTHER REPRESENT THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 30. Assignment.

This Agreement may not be assigned by Buyer or Seller without the prior written consent of the other such party. Notwithstanding the foregoing, Buyer may assign its rights under this Agreement (in whole or as to one or more individual Properties), without the consent of Seller, to any entity which controls, is controlled by, or is under common control with Buyer (control meaning the power, through ownership of voting rights or contract, to manage the decision making of an entity) (a “**Permitted Transferee**”), provided the assignee assumes in writing all of the obligations of Buyer to be performed under this Agreement (with respect to the applicable Property(ies)) and the applicable assumption agreement documenting the same is delivered to Seller at least five (5) business days prior to the Closing Date. Buyer shall not assign this Agreement to an entity or individual which would make any of the statements, representations or warranties of Buyer set forth in Section 12 of this Agreement untrue or incorrect and any such assignment shall be null and void and without force and effect. No assignment of this Agreement shall relieve Buyer from any of its obligations set forth herein arising prior to or after the effective date of the assignment. In addition, Buyer shall have the right to direct Seller, upon written notice to Seller prior to Closing, to transfer any individual Property to one or more Permitted Transferees in lieu of transferring such Property to Buyer at Closing. The final documents to be delivered at Closing, including, without limitation, the Deeds, the Assignments of Intangible Property and the Lease, shall be conformed to reflect the appropriate transferee as communicated by Buyer in accordance herewith.

Section 31. Further Assurances.

From time to time, as and when requested by any party hereto, the other party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement.

Section 32. Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 33. Buyers. Notwithstanding anything to the contrary in this Agreement, it is understood and agreed that the following Buyers are respectively purchasing the following Properties under this Agreement and receiving the Closing Documents therefor, and each Buyer is respectively funding the applicable Allocated Purchase Price attributable to such Property(ies):

[*]

Section 34. Intentionally Omitted.

Section 35. Press Releases.

Except for any disclosure required by applicable law (including, but not limited to any securities law) or by applicable rule or regulation of any stock exchange, neither Seller nor Buyer shall issue any press release or other public announcement with respect to this Agreement or the transaction contemplated hereby without the prior written consent of the other such party (provided, however, if such press release or other public announcement requires prior written consent hereunder but does not include the name of the other such party, the Purchase Price or any other material economic terms of the transaction contemplated hereby, then such consent shall not be unreasonably withheld, conditioned or delayed). In the event any press release or other public announcement is required by applicable law (including, but not limited to any securities law) or by applicable rule or regulation of any stock exchange, the disclosing party shall provide to the other party a copy of the form and content of the proposed disclosure at least two (2) business days in advance of public disclosure and the other party shall have the right to review and provide comments to such proposed disclosure to the disclosing party, which comments shall be considered in good faith by the disclosing party. If such other party does not comment on such proposed

disclosure within one business (1) day after receipt of the disclosing party's proposed disclosure, then such other party shall be deemed to have no comments to such proposed disclosure. If Seller intends to make such a disclosure, then Seller shall expressly direct such request for comment to Michael Reiter, Andrew Morris, Jared Sheiker, and Heba Elayan at the following email addresses, and copy David Rosenberg and David Stanek, at the following email addresses: michael.reiter@blueowl.com, andrew.morris@blueowl.com, jared.sheiker@blueowl.com, heba.elayan@blueowl.com, david.rosenberg@kirkland.com, and david.stanek@kirkland.com. Notwithstanding anything to the contrary in this Section 35, in the event that a party determines that a press release or other public announcement is required by applicable law (including, but not limited to any securities law) or by applicable rule or regulation of any stock exchange and must be made on such a timeframe that providing disclosure to the other party at least two (2) business days in advance of public disclosure is not reasonably possible under such applicable law or rule or regulation, then the disclosing party shall use its commercially reasonable efforts to allow the other party reasonable time (taking into account the circumstances) to comment on such disclosure in advance of issuing such disclosure.

Section 36. Local Law Provisions.

- (a) **California Property Provisions.** The provisions of this Section 36(a) will apply to the California Properties.
- i. **Natural Hazard Disclosure Act.**
- A. **Natural Hazard Areas.** As used in this Agreement, the term "Natural Hazard Areas" shall mean those areas identified as natural hazards in the Natural Hazard Disclosure Act, California Government Code Sections 8589.3, 8589.4, and 51183.5, and California Public Resources Code Sections 2621.9, 2694, and 4136, and any successor statutes of laws (the "NHD Act").
- B. **Natural Hazard Disclosure Statement.** Not later than three (3) days prior to the last day of the Examination Period, Seller shall deliver or cause to be delivered to Buyer a Natural Hazard Disclosure Statement (the "NHD Statement") for each California Property prepared by a company that prepares such statement in the normal course of business. Buyer acknowledges that the NHD Statement is being delivered pursuant to the NHD Act. Buyer acknowledges and agrees that nothing contained in the NHD Statement shall release Buyer from its obligation to fully investigate the condition of each California Property, including, without limitation, whether each California Property is located in any Natural Hazard Areas, and that Buyer has the expertise to perform such investigations and has agreed to do so under the terms of this Agreement. Buyer further acknowledges and agrees that the matters set forth in the NHD Statement may change on or prior to the Closing and that Seller has no obligation to update, modify, or supplement the NHD Statement. Buyer shall be solely responsible for preparing and delivering its own natural hazard disclosure statement to subsequent prospective buyers of each California Property.
- C. **Assumption of Risk.** Buyer acknowledges and agrees that it is a sophisticated and experienced buyer of real property, that Buyer shall conduct its own investigations

and studies of each California Property as it deems necessary or appropriate to determine the location of the Property Natural Hazard Areas and that the NHD Statement is being delivered subject to the terms, provisions and conditions of Section 19 and Section 36(a)(ii) below of this Agreement. Buyer shall have no claims against Seller if the NHD Statement discloses or fails to disclose that any California Property is located in a Natural Hazard Area. Buyer further acknowledges and agrees that Buyer assumes the risk of any liabilities, claims, demands, suits, judgments, losses, damages, expenses (including, without limitation, attorneys' fees and costs) and other obligations arising out of or incurred in connection with the effect of any natural hazard conditions or otherwise with respect to each California Property.

D. Conflicts. Nothing in this Section 36(a)(i) shall be deemed to limit or negate Seller's representations and warranties set forth in this Agreement and/or in the Closing Documents, Seller's indemnities set forth in this Agreement and/or in the Closing Documents, or the obligations and liabilities of Tenant under the Lease.

(ii) EXCEPT WITH RESPECT TO SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT AND/OR IN THE CLOSING DOCUMENTS, SELLER'S INDEMNITIES SET FORTH IN THIS AGREEMENT AND/OR IN THE CLOSING DOCUMENTS, AND THE OBLIGATIONS AND LIABILITIES OF TENANT UNDER THE LEASE, BUYER AS OF THE CLOSING RELEASES, DISCHARGES AND FOREVER ACQUITS THE SELLER PARTIES FROM ALL DEMANDS, CLAIMS, LIABILITIES, OBLIGATIONS, COSTS AND EXPENSES ARISING OUT OF OR OTHERWISE RELATING TO THE ENVIRONMENTAL CONDITION OF EACH CALIFORNIA PROPERTY. AS PART OF THE PROVISIONS OF THIS ARTICLE, BUT NOT AS A LIMITATION THEREON, BUYER HEREBY AGREES, REPRESENTS AND WARRANTS THAT THE MATTERS RELEASED HEREIN ARE NOT LIMITED TO MATTERS WHICH ARE KNOWN OR DISCLOSED, AND, EXCEPT WITH RESPECT TO SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT AND/OR IN THE CLOSING DOCUMENTS, SELLER'S INDEMNITIES SET FORTH IN THIS AGREEMENT AND/OR IN THE CLOSING DOCUMENTS, AND THE OBLIGATIONS AND LIABILITIES OF TENANT UNDER THE LEASE, BUYER HEREBY WAIVES ANY AND ALL RIGHTS AND BENEFITS WHICH IT NOW HAS, OR IN THE FUTURE MAY HAVE CONFERRED UPON IT, BY VIRTUE OF THE PROVISIONS OF FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS RELATING TO A WAIVER OF UNKNOWN CLAIMS, INCLUDING WITHOUT LIMITATION, SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA OR ANY SIMILAR STATUTE, LAW, RULE OR REGULATION OF ANY OTHER STATE. BUYER ACKNOWLEDGES THAT SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

IN THIS CONNECTION AND TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER HEREBY AGREES, REPRESENTS AND WARRANTS THAT BUYER REALIZES AND ACKNOWLEDGES THAT FACTUAL MATTERS NOW UNKNOWN TO BUYER MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES WHICH ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND BUYER FURTHER AGREES, REPRESENTS AND WARRANTS THAT THE WAIVERS AND RELEASES HEREIN HAVE BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THAT REALIZATION AND THAT, EXCEPT WITH RESPECT TO SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT AND/OR IN THE CLOSING DOCUMENTS, SELLER'S INDEMNITIES SET FORTH IN THIS AGREEMENT AND/OR IN THE CLOSING DOCUMENTS, AND THE OBLIGATIONS AND LIABILITIES OF TENANT UNDER THE LEASE, BUYER NEVERTHELESS HEREBY INTENDS TO RELEASE, DISCHARGE AND ACQUIT THE SELLER PARTIES FROM ANY SUCH UNKNOWN CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES WHICH ARE INCLUDED IN THE WAIVERS AND MATTERS RELEASED AS SET FORTH IN THIS ARTICLE. THE PROVISIONS OF THIS ARTICLE ARE MATERIAL AND INCLUDED AS A MATERIAL PORTION OF THE CONSIDERATION GIVEN TO SELLER BY BUYER IN EXCHANGE FOR SELLER'S PERFORMANCE HEREUNDER. SELLER HAS GIVEN BUYER MATERIAL CONCESSIONS REGARDING THIS TRANSACTION IN EXCHANGE FOR BUYER AGREEING TO THE PROVISIONS OF THIS ARTICLE. SELLER AND BUYER HAVE EACH INITIALED THIS ARTICLE TO FURTHER INDICATE THEIR AWARENESS AND ACCEPTANCE OF EACH AND EVERY PROVISION HEREOF. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS ARTICLE SHALL CONSTITUTE A WAIVER BY BUYER WITH RESPECT TO A BREACH BY SELLER UNDER THIS AGREEMENT OR ANY DOCUMENT EXECUTED BY SELLER IN CONNECTION HERewith, WITH RESPECT TO ANY FRAUD BY SELLER, ANY PERSONAL INJURY OR TORT CLAIM ALLEGED TO HAVE OCCURRED WHILE SELLER HELD TITLE TO EACH CALIFORNIA PROPERTY (UNLESS CAUSED BY BUYER'S OR BUYER'S CONSULTANTS' ACTIVITIES AT THE PROPERTY), OR ANY ACTS OR OMISSIONS OF SELLER OR THE SELLER PARTIES OCCURRING AFTER CLOSING.

BUYER'S INITIALS: /s/ MR

SELLER'S INITIALS: /s/ JR

iii. Section 9(c) and (e) of this Agreement is hereby modified to provide that with respect to each California Property, as material consideration to Seller's entering into this Agreement with Buyer, except in the case where Buyer has brought a suit for specific performance of this Agreement, Buyer expressly waives any right under California Code of Civil Procedure, Part II, Title 4.5 (Sections 405 through 405.60) or at common law or otherwise to record or file a lis pendens or a notice of pendency of action or similar notice against all of any portion of any California Property.

(b) **Colorado Property Provisions.** The provisions of this Section 36(b) will apply to the Colorado Property.

i. In addition to the documents identified in Section 10 above, at the Closing the Seller of the Colorado Property shall execute and deliver to the Title Insurer and the Buyer:

A. Statement of Authority in the form required by the Title Insurer, notarized and in recordable form;

B. a Colorado Form TD-1000 Real Property Transfer Declaration, evidencing a value of the Colorado Property in accordance with the Allocated Purchase Price; and

C. a Colorado Form DR 1083.

(c) **Florida Property Provisions.** The provisions of this Section 36(c) will apply to the Florida Properties.

i. Radon Gas. Pursuant to Section 404.056(5), Florida Statutes, radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

ii. Documentary Stamp Taxes. Seller shall pay all applicable documentary stamp taxes with respect to the transfer of the Florida Properties.

(d) **Louisiana Property Provisions.** The provisions of this Section 36(d) will apply to the Louisiana Property.

(i) The Earnest Money will not be treated as earnest money within the meaning of Louisiana law, but instead will be treated as a deposit on account of the price within the meaning of Louisiana Civil Code article 2624, and will be held and disposed of in accordance with the provisions of this Agreement.

(ii) The deed for the Louisiana Property will be an act of sale in conformity with Louisiana law, and will not reflect the Allocated Purchase Price. Buyer will execute

the act of sale to accept the Louisiana Property and for purposes of the waivers described in paragraph (v) below.

(iii) In addition to the act of sale for the Louisiana Property, the applicable Seller Entity and Buyer will execute an acknowledgment of sale price for the Louisiana Property, not to be recorded, evidencing the Allocated Purchase Price and containing such other information as may be reasonably required by Buyer or the Title Insurer to comply with applicable Louisiana law in substantially the form attached hereto as Exhibit I.

(iv) The Memorandum of Lease for the Louisiana Property will include the requirements for a notice of lease under the provisions of La. R.S. § 9:2742.

(v) Except only for the express representations and warranties of Seller in this Agreement: (x) the sale of the Louisiana Property will be made with a warranty of title only as to the acts of the applicable Seller Entity and anyone claiming by, through or under that Seller Entity; (y) the sale of the Louisiana Property will be made without any warranty whatsoever as to the condition or fitness of the Louisiana Property for any purpose, whether expressed or implied, not even for the return of the Purchase Price or any part thereof, including, but not limited to, any warranties against redhibitory defects; and (z) Buyer will waive the benefit of any and all such warranties. Without limiting the foregoing, but except as otherwise set forth in this Agreement, Buyer acknowledges that it will have had ample opportunity to examine the Louisiana Property and all of the improvements located thereon or appertaining thereto in connection with the use to which Buyer intends to make of the Louisiana Property and that it will specifically relieve and release Seller from any and all claims for vices or defects in the Louisiana Property and in any improvements thereon, whether obvious or latent, known or unknown and that it specifically and particularly waives any and all claims or causes of action for redhibition pursuant to Louisiana Civil Code articles 2520 et seq., for diminution of the purchase price pursuant to Louisiana Civil Code articles 2541 et seq., for concealment or any other theory of law. This release will also include all environmental vices or defects. However, the applicable Seller Entity will subrogate Buyer in and to all rights and actions in warranty that the Seller Entity has or may have against previous owners and vendors of the Louisiana Property. The act of sale for the Louisiana Property will include the foregoing waivers and disclaimers.

(vi) With respect to the Louisiana Property, references in this Agreement to: "real property" and "real estate" will include immovable property; "fee simple" will include full ownership; "personal property" will include movable property; "tangible property" will include corporeal property; "intangible property" will include incorporeal property; "easements" will include servitudes; "buildings" will include other constructions; the phrase "covenant running with the land" and other words of similar import will include a real right or a recorded lease of immovable property; "county" will include a parish; "condemnation" will include "expropriation"; and the UCC or the Uniform Commercial Code will include the Louisiana Commercial Laws, La. R.S. §§ 10:1-101 et seq.

(e) **Texas Property Provisions**. The provisions of this Section 36(e) will apply to the Texas Properties.

Seller makes the following statutory disclosures:

(i) **TEXAS AGRICULTURAL DEVELOPMENT DISTRICT:** To the best of Seller's knowledge, the Property is not located in a Texas Agricultural Development District, pursuant to Section 60.063, Agriculture Code. For additional information contact the Texas Department of Agriculture.

(ii) **ANNEXATION:** The following disclosure is made for the purpose of complying with the provisions of Section 5.011 of the Texas Property Code: **NOTICE REGARDING POSSIBLE ANNEXATION:** If the Property that is the subject of this Agreement is located outside the limits of a municipality, Seller notifies Buyer under Section 5.011 of the Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the property for further information.

(iii) **PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** The following notice is required by §13.257, Water Code: The Property described in this Agreement, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If the Property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to the Property. You are advised to determine if the Property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your Property. The Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the Property described in this Agreement or at closing of purchase of the Property.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Purchase and Sale of Real Property as of the day and year first set forth above.

SELLER:

Big Lots Stores, LLC., an Ohio limited liability company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

Big Lots Stores – PNS, LLC, a California limited liability company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

AVDC, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

BUYER:

BIG Portfolio Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG SATX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG DETX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG FBTX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG AVCA Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

JOINDER BY BIG LOTS, INC.

Big Lots, Inc., an Ohio corporation and the parent of the Seller, hereby joins in the execution of this Agreement to evidence its agreement to be bound by all of the terms and conditions set forth herein and to guaranty the payment and performance of all of the obligations of Seller hereunder.

BIG LOTS, INC., an Ohio corporation

By:	<u>/s/ Jonathan Ramsden</u>
Name:	<u>Jonathan Ramsden</u>
Title:	<u>EVP, CF&AO</u>

JOINDER BY TITLE INSURER

Title Insurer joins in the execution of this Agreement to evidence its agreement to receive, hold and disburse funds and documents in accordance with the terms and provisions of this Agreement. Title Insurer agrees to act as escrow holder with respect to the Earnest Money in accordance with the terms of this Agreement and hereby establishes _____, 2023, as the date of opening of escrow and designates _____ as the escrow number assigned to this escrow. Title Insurer agrees to act as the “Reporting Person” for this transaction and as defined in Section 6045(e) of the Internal Revenue Code and the regulations promulgated thereunder (collectively, the “**Reporting Requirements**”) and to perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person with respect to this transaction. Title Insurer agrees that it will submit to the jurisdiction of the State Courts of the State of Illinois in connection with any dispute which shall arise under the terms of this Agreement. Title Insurer agrees that service of process on Title Insurer in Illinois in accordance with Illinois law shall constitute adequate service of process. Title Insurer agrees that it will not contest the jurisdiction of the State of Illinois Courts in connection with any litigation over any dispute arising under this Agreement. Title Insurer further agrees that in the event there is a dispute between the parties hereto it shall deposit the Earnest Money it is holding in escrow into whatever Illinois Court the litigation is pending.

TITLE INSURER:

Chicago Title Insurance Company

By: /s/ Rebecca L. Radabaugh
Name: Rebecca L. Radabaugh
Title: Assistant Vice President

EXHIBITS AND SCHEDULES

<u>Exhibit A-1</u> through <u>A-28</u>	-	Legal Descriptions of the Properties
<u>Exhibit B-1</u>	-	Form of California Deed
<u>Exhibit B-2</u>	-	Form of Colorado Deed
<u>Exhibit B-3</u>	-	Form of Florida Deed
<u>Exhibit B-4</u>	-	Form of Louisiana Deed
<u>Exhibit B-5</u>	-	Form of Michigan Deed
<u>Exhibit B-6</u>	-	Form of New Mexico Deed
<u>Exhibit B-7</u>	-	Form of Ohio Deed
<u>Exhibit B-8</u>	-	Form of Texas Deed
<u>Exhibit C</u>	-	Form of Lease
<u>Exhibit D</u>	-	Form of Assignment of Intangible Property
<u>Exhibit E</u>	-	FIRPTA Affidavit
<u>Exhibit F</u>	-	Seller's Affidavit
<u>Exhibit G</u>	-	Columbus DC Lease Amendment
<u>Exhibit H</u>	-	Texas Owner's Affidavit
<u>Exhibit I</u>	-	Form of Louisiana Acknowledgement of Sale Price
<u>Schedule 3(c)</u>	-	Allocation of Purchase Price
<u>Schedule 6(b)</u>	-	Due Diligence Materials

EXHIBIT A

[*]

EXHIBIT B-1

FORM OF CALIFORNIA DEED

RECORDING REQUESTED BY:

CHICAGO TITLE COMPANY

WHEN RECORDED MAIL TO AND

MAIL TAX STATEMENTS TO:

Space Above This Line for Recorder's Use Only

A.P.N.: _____

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$ _____

☒ computed on the consideration or full value of property conveyed, OR

☐ computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,

☐ unincorporated area; ☐ City of _____, and

Exempt from SB2 fee per GC 27388.1 (a) (2); recorded in connection with a transfer subject to the imposition of documentary transfer tax (DTT).

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, _____

_____ hereby GRANTS to _____

_____ the following described property in the City of _____, County of _____

_____, State of California:

See Exhibit A attached hereto and made a part hereof

TOGETHER WITH all interests, privileges and easements appurtenant thereto and any and all improvements located thereon.

SUBJECT TO: (i) real estate taxes and assessments which are a lien but not yet due and payable, (ii) building and zoning and building ordinances, and (iii) those certain easements, restrictions, covenants, conditions and other matters set forth on Exhibit B attached hereto and made a part hereof.

Dated: ____, 2023

A.P.N.:

BIG LOTS STORES – PNS, LLC, a California limited liability company, successor by conversion to PNS Stores, Inc., a California corporation

By: _____
Jonathan Ramsden, Executive Vice President,
Chief Financial and Administrative Officer

STATE OF OHIO)SS

COUNTY OF FRANKLIN)

The foregoing instrument was acknowledged before me this ____, 2023, by Jonathan Ramsden, Executive Vice President, Chief Financial and Administrative Officer of _____, on behalf of _____.

Notary Signature

EXHIBIT A TO CALIFORNIA DEED

[To be inserted]

APN: _____

EXHIBIT B TO CALIFORNIA DEED

Permitted Exceptions

[To be inserted]

EXHIBIT B-2

FORM OF COLORADO DEED

When recorded return to:

[_____]
[_____]
[_____]

Attention: [_____]

SPECIAL WARRANTY DEED

[Statutory Form - C.R.S. § 38-30-113]

[____], a [____] ("Grantor"), whose street address is [____], for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells and conveys to [____], whose street address is [____], the real property in the County of El Paso and State of Colorado described on Exhibit A attached hereto and made a part hereof, with all its appurtenances, and warrants the title to the same against all persons claiming under Grantor, subject to the matters set forth on Exhibit B attached hereto and made a part hereof.

The street address for the foregoing property is: 1990 S Academy Blvd, Colorado Springs, CO 80916.

Signed as of this _____ day of _____, 20__.

[____],
a [____]

By: _____
Name: _____
Title: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20_ by _____, as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

**TO
COLORADO SPECIAL WARRANTY DEED**

LEGAL DESCRIPTION

[To be inserted]

EXHIBIT B

TO
COLORADO SPECIAL WARRANTY DEED
TITLE EXCEPTIONS

[To be inserted]

EXHIBIT B-3

FORM OF FLORIDA DEED

PREPARED BY:

Vorys, Sater, Seymour and Pease LLP
50 South Main Street, Suite 1200
Akron, Ohio 44303

Attention: Jacinto A. Nunez, Esq.

AFTER RECORDING, RETURN TO:

Attention: [INSERT NAME OF NATURAL PERSON]

Property Appraiser's Parcel Identification

No.: _____

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made as of the ____ day of _____, 2023, by _____, a _____, whose address is _____, a _____ whose address is _____, hereinafter called Grantor, and _____, a _____ whose address is _____, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee, all of Grantor's right, title and interest in and to those tracts or parcels of land being more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

TOGETHER WITH all the improvements, tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

SUBJECT TO all of the matters described on Exhibit B attached hereto and incorporated herein by this reference (collectively, the "Permitted Exceptions").

TO HAVE AND TO HOLD the same in fee simple forever.

AND GRANTOR hereby covenants with Grantee that Grantor is lawfully seized of the Property in fee simple; that Grantor has good right and lawful authority to sell and convey the Property, and hereby warrants the title to the Property and will defend the same against the lawful claims of all persons claiming by, through or under said Grantor, but against none other; and that the Property is free of all encumbrances except the Permitted Exceptions.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has signed and sealed these presents as of the day and year above written.

WITNESS:

GRANTOR:

Printed Name:

_____, a

By:

Name:

Title:

WITNESS:

Printed Name:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2023, by _____, as _____ of _____, a _____, on behalf of the company. He/She is personally known to me or has produced _____ as identification.

Notary Public, State of

Print Name:

Commission No.:

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION

[To be inserted]

EXHIBIT B

PERMITTED EXCEPTIONS

[To be inserted]

EXHIBIT B-4

FORM OF LOUISIANA DEED

ACT OF SALE * UNITED STATES OF AMERICA

*** STATE OF _____**

BY * COUNTY/PARISH OF _____

*** AND**

*** STATE OF _____**

TO * COUNTY/PARISH OF _____

*** * * * * ***

BE IT KNOWN, that on this ____ day of _____, 202[], but effective as of the ____ day of _____, 202[] (the "Effective Date");

BEFORE ME, _____, a Notary Public, duly commissioned and qualified, in and for the County/Parish of _____, State of _____, and in the presence of the undersigned competent witnesses:

PERSONALLY CAME AND APPEARED:

_____, a _____ (last four digits of federal taxpayer identification number: _____), whose mailing address is _____, appearing herein through _____, its duly authorized representative, pursuant to a resolution of its [board of directors/members/managers], a certified copy of which is attached hereto as **Exhibit "C"** (hereinafter sometimes referred to as "Grantor"); and

BE IT KNOWN, that on this ____ day of _____, 202[], but effective as of the Effective Date;

BEFORE ME, _____, a Notary Public, duly commissioned and qualified, in and for the County/Parish of _____, State of _____, and in the presence of the undersigned competent witnesses:

PERSONALLY CAME AND APPEARED:

_____, a _____ (last four digits of federal taxpayer identification number: _____), whose mailing address is _____, appearing herein through _____, its duly authorized representative, pursuant to a resolution of its [board of directors/members/managers], a certified copy of which is attached hereto as **Exhibit "D"** (hereinafter sometimes referred to as "**Grantee**");

who declared as follows:

Grantor does by these presents grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver without warranty of title other than as to matters arising from Grantor's own acts or otherwise arising by, through or under Grantor or by reason of persons claiming by, through, or under Grantor, and with full substitution and subrogation in and to all the rights and actions of warranty which said Grantor has or may have against all preceding owners and vendors, unto Grantee, here present accepting, and purchasing for itself, its heirs, successors and assigns, and acknowledging due delivery and possession thereof, all and singular the immovable property located in the State of Louisiana, Parish of Bossier, described on **Exhibit "A"** attached hereto and made a part hereof (the "**Land**"), together with all improvements, buildings, structures, other constructions, and all component parts and fixtures located thereon, and including any and all rights, privileges, easements, servitudes, and appurtenances, if any, thereunto belonging (collectively, the "**Improvements**") (the Land and Improvements are collectively the "**Property**").

SUBJECT ONLY TO those certain matters described on **Exhibit "B"** attached hereto and made a part hereof.

To have and to hold the above described Property unto the said Grantee, its heirs, successors and assigns forever.

This Act of Sale is made and accepted for and in consideration of the price and sum described in the Acknowledgment of Sale Price by and between Grantor and Grantee dated as of the Effective Date. The recitation of the amount of the purchase price is omitted from this Act of Sale at the request of the parties. Grantor hereby acknowledges receipt of and adequacy of the full amount of the purchase price, which Grantee has well and truly paid, in ready and current money, and Grantor hereby acknowledges the receipt thereof and grants full acquittance and discharge therefor. Grantee hereby waives any vendor's lien, any resolatory condition and any right to rescind this Act of Sale by reason of non-payment of the purchase price.

Except as may be otherwise set forth in another written agreement between Grantor and Grantee (including, without limitation, that certain Agreement for Purchase and Sale of Real Property between Grantor and Grantee dated _____, 2023 (the "**Purchase Agreement**")): (a) this Act of Sale is made without any warranty whatsoever as to the condition or fitness of the Property for any purpose, whether expressed or implied, not even for the return of the purchase

price or any part thereof, including, but not limited to, any warranties against redhibitory defects; and (b) Grantee hereby waives the benefit of any and all such warranties. Without limiting the foregoing, but except as may be otherwise set forth in another written agreement between Grantor and Grantee (including, without limitation, the Purchase Agreement), Grantee declares and acknowledges that it has had ample opportunity to examine the Property, including all of the Improvements located thereon or appertaining thereto, in connection with the use to which Grantee intends to make of the Property, that it accepts the Property “as is,” “where is” and “with all faults,” and that it specifically relieves and releases Grantor from any and all claims for vices or defects in the Property, including the Improvements, whether obvious or latent, known or unknown and that it specifically and particularly waives any and all claims or causes of action for redhibition pursuant to Louisiana Civil Code articles 2520 et seq., for diminution of the purchase price pursuant to Louisiana Civil Code articles 2541 et seq., for concealment or any other theory of law. This release also includes, but is not limited to, all environmental vices or defects. However, Grantor hereby subrogates Grantee in and to all rights and actions in warranty that Grantor has or may have against previous owners and vendors of the Property.

Grantor further declares that there are no State, Parish or City taxes due or payable as of the date hereof on the Property. All ad valorem taxes payable on the Property shall be prorated by the Grantor and the Grantee. In accordance with La. R.S. 9:2721(A), from and after the date of this Act of Sale, (a) the name of the person responsible for all property taxes and assessments is [], and (b) all property tax and assessment notices should be mailed to the following address: _____.

The parties hereto waive the production of tax, mortgage, conveyance and other certificates and relieve and release each undersigned Notaries from any and all responsibility and/or liability in connection therewith. The parties hereto agree and acknowledge that the undersigned Notaries have not been required to examine title to the Property conveyed herein, or render an opinion of title with respect thereto, and the Grantee hereby relieves and releases the undersigned Notaries from any and all responsibility and or liability in connection therewith.

This Act of Sale may be executed in multiple counterparts, each of which shall be an original, and all of which shall together constitute one and the same instrument.

[SIGNATURE PAGES TO FOLLOW]

THUS DONE AND PASSED in _____, State of _____, on the _____ day of _____, 202[], but effective as of the Effective Date, in the presence of the undersigned competent witnesses, who hereunto sign their names with the said appearer and me, Notary, after reading of the whole.

GRANTOR:

_____, a _____

By: _____

Name: _____

Title: _____

WITNESSES:

Print Name: _____

Print Name: _____

NOTARY PUBLIC

Print Name: _____

Bar of Notary No.: _____

MY COMMISSION EXPIRES: _____

THUS DONE AND PASSED in _____, State of _____, on the _____ day of _____, 202[], but effective as of the Effective Date, in the presence of the undersigned competent witnesses, who hereunto sign their names with the said appearer and me, Notary, after reading of the whole.

GRANTEE:

_____, a _____

By: _____

Name: _____

Title: _____

WITNESSES:

Print Name: _____

Print Name: _____

NOTARY PUBLIC

Print Name: _____

Bar of Notary No.: _____

MY COMMISSION EXPIRES: _____

EXHIBIT A

Legal Description of Property.

[To be inserted]

EXHIBIT B

Permitted Title Exceptions

[To be inserted]

EXHIBIT C

Grantor Resolutions

See attached.

EXHIBIT D

Grantee Resolutions

See attached.

EXHIBIT B-5

FORM OF MICHIGAN DEED

COVENANT DEED

GRANTOR: _____, a _____, having an address at _____.

GRANTS, BARGAINS, SELLS, AND CONVEYS TO:

GRANTEE: _____, a _____, having an address at _____.

PROPERTY: The following described "Property" located in the City of _____, _____ County, Michigan, to wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT "A"

together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, for the consideration of (SEE REAL ESTATE TRANSFER TAX VALUATION AFFIDAVIT FILED), to have and to hold the premises as before described with the appurtenances, unto the said Grantee, its successors and assigns, forever subject to those matters described in Exhibit "B" attached hereto (hereinafter called the "Permitted Exceptions").

The Grantor covenants and agrees that it has not done or suffered to be done anything whereby the property herein conveyed is, or may be, in any manner encumbered or charged, except for the Permitted Exceptions, and Grantor warrants and agrees to defend all or any part of the said property conveyed herein unto Grantee, its successors and assigns, against the claims of all persons claiming by, through or under Grantor, except for any Permitted Exception.

The Grantor[s] grant[s] to the Grantee[s] the right to make all divisions under section 108 of the Land Division Act, Act No 288 of the Public Acts of 1967, as amended.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices that may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[Covenant Deed Notarization Page]

DATED: _____, 2023.

GRANTOR:

By: _____

Printed Name: _____

Its: _____

STATE OF _____ }
_____ } ss:
COUNTY OF _____ }

Acknowledged before me this ____ day of _____, 2023, by _____, the _____, a
_____, on behalf of said company.

Notary Public

Acting in _____ County, Michigan
My Commission Expires: _____

Drafted by: Send future tax bills to: Grantee
When Recorded return to: Grantee

EXHIBIT A TO FORM OF MICHIGAN DEED

LEGAL DESCRIPTION

Land situated in the City of _____, County of _____, State of MI described as follows:

[To be inserted]

Commonly known as:

Tax Parcel ID No.:

EXHIBIT B TO FORM OF MICHIGAN DEED

PERMITTED EXCEPTIONS

[To be inserted]

FORM OF NEW MEXICO DEED

(Space Above This Line For Recorder's Use)

_____, a _____, for consideration paid, grants to _____, a _____, whose address is _____, that certain real estate in _____ County, New Mexico, described on **Exhibit A** attached hereto;

WITH special warranty covenants.

STATE OF _____ §
 COUNTY OF _____ §

Notary Public

My Commission Expires:

EXHIBIT A TO NEW MEXICO DEED

Description of Property.

[To be inserted]

EXHIBIT B TO NEW MEXICO DEED

Permitted Exceptions

[To be inserted]

EXHIBIT B-7

FORM OF OHIO DEED

LIMITED WARRANTY DEED

grants, _____, a(n) _____ ("Grantor"), for valuable consideration paid, with limited warranty covenants, to _____, a(n) _____ ("Grantee"), whose tax mailing address is _____, the real property more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

Parcel No: _____

Address: Address: _____

Prior Instrument

Reference: _____

This grant is made by Grantor and accepted by Grantee subject to (i) those certain conditions, restrictions, reservations, easements, leaseholds, rights-of-way set forth in Exhibit B attached hereto and made a part hereof; (ii) real estate taxes and assessments not yet due and payable; (iii) any portion of the Property situated within the confines of a publicly dedicated right-of-way or legal highway; and (iv) zoning ordinances and regulations.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized officer this ____ day of _____, 20__.

[]

By: _____
Name: _____
Title: _____

Notarial Certificate
Acknowledgement

STATE OF _____
COUNTY OF _____, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of _____, a(n) _____, on behalf of the _____.

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of _____, on behalf of _____, a(n), the _____.

This Instrument Prepared by:

EXHIBIT A TO FORM OF OHIO DEED

[TO BE INSERTED]

Parcel Number:

Property Address:

EXHIBIT B TO FORM OF OHIO DEED

[TO BE INSERTED]

EXHIBIT B-8

FORM OF TEXAS DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

This instrument prepared by and
after recording return to:

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (this “**Deed**”), executed as of the _____ day of _____, 20__, by _____,
a(n) _____ (the “**Grantor**”), whose mailing address is _____, to _____, a(n)
_____ (the “**Grantee**”), whose mailing address is _____.

W I T N E S S E T H:

THAT the Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situated in _____ County, Texas being more particularly described as follows (the “**Property**”):

See Exhibit “A” attached hereto and incorporated herein by reference.

This conveyance is being made by Grantor and accepted by Grantee subject only to those certain title exceptions set forth in **Exhibit “B”** attached hereto and made a part hereof for all purposes, but only to the extent that such exceptions are valid, existing, and, in fact, affect the Property.

TO HAVE AND TO HOLD the above-described Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto said Grantee, its successors and assigns, forever, and subject to the exceptions set forth on the attached **Exhibit “B”**. Grantor does hereby bind itself and its successors to WARRANT and FOREVER DEFEND all and singular the said premises unto Grantee, its successors, and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof, by, through, or under Grantor, but not otherwise.

Ad valorem taxes have been prorated between Grantor and Grantee and, by acceptance of this Deed, Grantee hereby assumes sole responsibility for the payment thereof.

IN WITNESS WHEREOF, Grantor has executed this Deed as of the day and year first above written.

GRANTOR:

By: _____

Print Name: _____

Title: _____

STATE OF TEXAS

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as
_____ of _____, a(n) _____, on behalf said
_____.

Print
Name: _____

Notary Public, State of Texas

Commission
No.: _____

My Commission
Expires: _____

EXHIBIT C

LEASE

[See attached]

EXHIBIT D

FORM OF

ASSIGNMENT OF INTANGIBLE PROPERTY

THIS ASSIGNMENT OF INTANGIBLE PROPERTY (this “**Assignment**”) is made as of [____], 2023 (the “**Effective Date**”) by and between [____], a [____] (“**Assignor**”), and [____], a Delaware limited liability company (“**Assignee**”).

WITNESSETH:

WHEREAS, pursuant to that certain Agreement for Purchase and Sale of Real Property dated [____] (the “**Purchase Agreement**”) by and between Assignor, as seller, and Assignee, as buyer, Assignor has agreed to convey to Assignee, and Assignee has agreed to accept from Assignor, all of Assignor’s right, title and interest in and to the real property, and the buildings and other improvements located thereon, owned by Assignor and commonly known by the address of [____] (the “**Property**”); and

WHEREAS, pursuant to the terms of the Purchase Agreement, Assignor is required to execute and deliver this Assignment in order to facilitate the assignment of all right, title and interest of Seller, if any, to any unpaid award as of the date hereof for (1) any taking or condemnation of the Real Property or any portion thereof, or (2) any damage to the Real Property or the Improvements by reason of a change of grade of any street or highway; (3) all easements and appurtenances relating to any of the foregoing (individually or collectively, as the context may require, the “**Intangible Property**”); and

WHEREAS, simultaneously with the execution and delivery of this Assignment, the transactions contemplated by the Purchase Agreement with respect to the Property are being consummated by Assignor and Assignee.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by Assignee to Assignor, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties hereto for themselves, their legal representatives, successors and assigns, hereby agree as follows:

All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

Effective as of the Effective Date, Assignor hereby assigns and transfers unto Assignee, its successors and assigns, forever, in each case, to the extent the same are assignable and are not required to be maintained by Assignor in order for Assignor to perform its obligations as tenant under the Master Lease Agreement dated as of even date herewith by and between Assignee, as landlord, and [____] as tenant with respect to the Property, all of its right, title and interest in, to and under the Intangible Property.

Assignee hereby assumes the obligations of Assignor in respect of such Intangible Property to the extent arising from events occurring from and after the Effective Date.

Assignee shall defend, protect, indemnify, and hold harmless Assignor and its partners, beneficial owners, affiliates, officers, agents, employees, representatives or other constituent entities of Assignor from and against any and all loss, cost, liability, expense, claim, action, damages, and fines (including those

arising from the loss of life, personal injury and/or property damage), including reasonable attorneys' fees, directly or indirectly arising from or out of any failure by Assignee, from and after the Effective Date, to perform Assignee's obligations in respect of such Intangible Property. The foregoing indemnification obligations shall be subject to the rights and obligations of Assignor and Assignee pursuant to the Lease.

Assignor shall defend, protect, indemnify, and hold harmless Assignee and its partners, beneficial owners, affiliates, officers, agents, employees, representatives or other constituent entities of Assignee from and against any and all loss, cost, liability, expense, claim, action, damages, and fines (including those arising from the loss of life, personal injury and/or property damage), including reasonable attorneys' fees, directly or indirectly arising from or out of any failure by Assignor, on or before the Effective Date, to have performed Assignor's obligations in respect of such Intangible Property. The foregoing indemnification obligations shall be subject to the rights and obligations of Assignor and Assignee pursuant to the Lease.

Except as may be set forth in the Purchase Agreement, this Assignment is made without representation, warranty, guarantee, or other assurance or covenant of any kind by Assignor, and without recourse with respect to Assignor or with respect to any of the partners, beneficial owners, officers, agents, employees, representatives, affiliates, or other constituent entities of Assignor.

[SIGNATURE PAGE FOLLOWS]

ASSIGNOR:

[____], a [_____]

By: _____
Name: _____
Title: _____

ASSIGNEE:

[____],
a Delaware limited liability company

By: _____
Name: _____
Title: _____

SCHEDULE A TO ASSIGNMENT OF INTANGIBLE PROPERTY

(Add legal description of Real Property)

EXHIBIT E

FORM OF FIRPTA AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon disposition of a U.S. real property interest by [____], a [____] (“**Transferor**”), to [____], a [____] (“**Transferee**”), Transferor hereby certifies the following:

Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

Transferor is not a disregarded entity for federal income tax purposes.

Transferor’s U.S. taxpayer identification number is _____.

Transferor’s office address is [____], [____], [____] [____].

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

SIGNATURE PAGE FOLLOWS

Transferor declares that it has examined this certificate and to the best of its knowledge and belief it is true, correct, and complete, and that the person signing below has authority to sign this document on behalf of Transferor.

Dated: [____], 2023

Transferor:

[____], a [_____]

By: _____

Name: _____

Title: _____

NOTICE TO TRANSFEREE: You are required by law to retain this Certificate until the end of the fifth taxable year following the taxable year in which the transfer takes place and to make it available to the Internal Revenue Service if requested during that period.

EXHIBIT F

FORM OF SELLER'S AFFIDAVIT OF TITLE

A. The undersigned, _____, solely in his capacity as _____ of [_____] ("**Owner**"), in consideration of Chicago Title Insurance Company (the "**Company**") issuing its policy of title insurance insuring an interest in the property located at _____ (the "**Property**") described in Title Commitment Number _____, dated _____, and updated through _____ (the "**Commitment**"), hereby represents and certifies to the Company as follows:

1. That, except as noted at the end of this paragraph, within the last _____ (____) days (a) Owner has not entered into any contract, which remains outstanding and unpaid, for labor, service or materials furnished to improve the land, or to rehabilitate, repair, refurbish, or remodel the building(s) situated on the land that might become the subject of a lien upon the Property and that has not been paid for; (b) nor has Owner entered into any contract, which remains outstanding and unpaid, for goods, chattels, machinery, apparatus or equipment that has been attached to the building(s) thereon, as fixtures, that might become the subject of a lien upon the Property; (c) nor has Owner entered into any contract, which remains outstanding and unpaid, for the furnishing of labor, service, materials, machinery, apparatus or equipment which are to be completed subsequent to the date hereof that might become the subject of a lien upon the Property and that has not been paid for, except the following, if any:
2. Owner is in sole possession of the Property, and no other party has possession, or, to Owner's actual knowledge, has a right of possession under any tenancy, lease or other agreement, written or oral, except for parties in possession claiming by through or under the leases, licenses or other occupancy agreements set forth on Exhibit A attached hereto.
3. Except as otherwise set forth in the Commitment, Owner has not granted any rights of first refusal or options to purchase all or any part of the Property which remain in force and effect.
4. That all management fees, site and/or assessment fees, and franchise fees, if any, are fully paid.
5. Owner has received no notice of any violation of any covenants, conditions or restrictions, if any, affecting the Property.
6. No proceedings in bankruptcy or receivership have been instituted by or against Owner within the last ten years, and Owner has never made a general assignment for the benefit of creditors.
7. There is no action currently pending in any state or federal court in the United States to which Owner is a party, except as may be disclosed in the public records.
8. That (1) there are no outstanding unpaid sellers or suppliers protected by the Perishable Agricultural Commodities Act of 1930, as amended, 7 USC 499a, et seq., ("**PACA**"), or the Packers and Stockyard Act of 1921, as amended, 7 USC 181, et seq., ("**PASA**"), or any similar state laws, (2) no notices of claim or notices of intent to preserve claim rights have been received by Owner from PACA/PASA sellers or suppliers, and (3) there are no parties claiming to hold or assert rights, claims or interests under PACA/PASA against Owner or against the Property.
9. Owner has not received notice of any taxes and/or special assessments affecting the Property, other than those shown on the Commitment, and all real estate taxes are paid in full; further, there are no delinquent water, sewer, electric, gas or special assessments for items, such as improvements for sidewalks, curbs, gutters, sewers, etc., not shown as existing liens in the public records, and Owner (or its affiliate), as tenant, under the lease to be entered into by the purchaser of the Property ("**Purchaser**") and Owner (or its affiliate), in connection with the closing of the sale of the property by Owner to such purchaser (the "**Lease**"), will be responsible for payment of same under the terms and conditions of the Lease.

B. Owner acknowledges and agrees as follows:

1. The Company has been requested to issue its policy of title insurance referenced above in favor of the insured named therein.

2. The parties in the transaction have requested the Company to provide a so-called “New York Style Closing” which provides for the unconditional delivery of the closing instrument(s) between the parties and the passing of consideration therefor.

3. This Certificate is given to induce the Company to issue its policy or policies of Title Insurance with full knowledge that it will be relying upon the accuracy of same. Owner hereby indemnifies and agrees to save harmless the Company against any damages or expense, including attorney fees, sustained as a result of any of the foregoing matters not being true and accurate. It is agreed that in consideration of the Company issuing its title policy or policies without making exception therein of matters which may arise between the date hereof and the date the documents creating the interest being insured have been filed for record and which matters may constitute an encumbrance on or affect said title, Owner agrees to (a) promptly defend, remove, bond or otherwise dispose of any encumbrance, lien or objectionable matter to title that (i) is affirmatively created by Owner or (ii) results from a mechanics’ lien arising from a contract entered into by Owner, which remains outstanding and unpaid, for (x) labor, service or materials furnished to improve the land, or to rehabilitate, repair, refurbish, or remodel the building(s) situated on the land, or (y) goods, chattels, machinery, apparatus or equipment that attach to the building(s) thereon, as fixtures (any such encumbrance, lien or objectionable matter described in clause (i) or (ii), collectively, “objection(s) to title”), and that (in each case under clause (i) and clause (ii)) is recorded against the Property during the period of time between the most recent effective date of the Commitment (as most recently down dated) and the date of recording of the deed executed and delivered by Owner to Purchaser (but in no event later than thirty (30) days after the date hereof), and (b) hold harmless and indemnify the Company against all expenses, costs and reasonable attorney’s fees which may arise out of its failure to so remove, bond or otherwise dispose of any said “objection(s) to title”; provided, however, that the memorandum of the Lease, entered into as of the date hereof, shall not be considered an objection to title.

This Certificate is made for the purpose of inducing the Company to issue its policy of title insurance. This Certificate may be relied upon by the Company but may not be relied upon by any other person or entity.

IN WITNESS WHEREOF, the Company has executed this Certificate as of _____, 2023.

_____, an

By: _____
Name: _____
Title: _____

Exhibit G

COLUMBUS DC LEASE AMENDMENT

Exhibit A-1

Lease

[See attached]

Exhibit A-2

Guaranty.

[See attached]

EXHIBIT H

TEXAS OWNER'S AFFIDAVIT

AFFIDAVIT AS TO DEBTS AND LIENS

THE STATE OF TEXAS §

COUNTY OF _____ § GF #

BEFORE ME, the undersigned authority, on this day, personally appeared the undersigned (hereinafter called Affiant) (whether one or more) and each on his oath, deposes and says, as follows:

1. Affiant is the owner of the following described property, to-wit (the "Property"):

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

2. Affiant is desirous of selling the above described property and has requested **Chicago Title of Texas, LLC**, on behalf of Chicago Title Insurance Company, to issue a title policy insuring the title of same to his purchaser.

3. In connection with the issuance of such policy, Affiant makes the following statement of facts:

a. That Affiant owes no past due Federal or State taxes and that there are no delinquent Federal assessments presently existing against Affiant, and that no Federal or State Liens have been filed against Affiant, **EXCEPT AS SHOWN ON COMMITMENT**.

b. That there are no delinquent State, County, City, School District, Water District or other governmental agency taxes due or owing against said property and that to Affiant's actual knowledge, no tax suit has been filed by any State, County, Municipal Water District or other governmental agency for taxes levied against said property, nor any delinquent maintenance charges.

c. All labor and material used in the construction of improvements or repairs, if any, on the above described property have been paid for and there are now no unpaid labor or material claims against the improvements or repairs, if any, or the property upon which same are situated, and Affiant hereby declares that all sums of money due for the erection of improvements or repairs, if any, have been fully paid and satisfied and there are no Mechanic's or Materialmen's liens against the hereinabove property.

d. To Affiant's actual knowledge, no paving assessments or lien has been filed against the hereinabove described property, and Affiant owes no paving charges.

e. To Affiant's actual knowledge, there are no judgment liens filed against Affiant, **EXCEPT AS SHOWN ON COMMITMENT**.

f. To Affiant's actual knowledge, there are no suits pending against Affiant in Federal or State Court that may affect the Property.

g. That Affiant knows of no adverse claim to the Property and that so far as Affiant knows there are no encroachments or boundary conflicts.

h. That there are no outstanding unrecorded mortgages or deeds of trust affecting the Property

i. That Affiant has not heretofore sold, contracted to sell or conveyed any part of said Property other than in connection with this sale.

j. No unpaid debts for electric or plumbing fixtures, water heaters, floor furnaces, air conditioners, radio or television antennae, carpeting, rugs, lawn sprinkling systems, venetian blinds, window shades, draperies, electric appliances, fences street paving, or any personal property or fixtures to be conveyed in connection with this sale that are located on the subject property described above, and that no such items have been purchased on time payment contracts, and there are no security interests on such property secured by financing statements, security agreement or otherwise except the following:

Secured Party

	Approximate Amount
_____	\$ _____

Creditor

	Approximate Amount
_____	\$ _____

k. No parties in possession or tenants on property, except as follows:

NONE

4. Affiant recognizes that but for the making of the hereinabove statements of fact relative the hereinabove described property **Chicago Title of Texas LLC** would not issue a title policy on said property and that such statements have been made as a material inducement for the issuance of such policy.

WITNESS my hand this _____ day of _____, 20__.

By: _____

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 20__, by _____, _____, of _____.

Given under my hand and seal of office on the _____ day of _____, 20__.

Notary Public, State of Texas

My Commission Expires:

EXHIBIT "A"
(Legal Description)

EXHIBIT I

FORM OF LOUISIANA ACKNOWLEDGMENT OF SALE PRICE

	*	United States of America
Acknowledgment of Sale Price	*	State of _____
	*	
By	*	Parish/County of _____
_____	*	
	*	and
And	*	State of _____
_____	*	Parish/County of _____
	*	

Article I Introduction and Parties

Section 2. Be it known, that on this _____ day of _____, 2023, before me, the undersigned Notary Public, duly commissioned and qualified in and for the State of _____, Parish/County of _____, and in the presence of the undersigned competent witnesses, personally came and appeared:

_____ (the "**Grantor**"), a _____, whose taxpayer identification number is xx-xxx_ _ _ , and whose mailing address is _____, appearing herein through _____, its duly authorized _____.

Section 3. Be it known, that on this _____ day of _____, 2023, before me, the undersigned Notary Public, duly commissioned and qualified in and for the State of _____, Parish/County of _____, and in the presence of the undersigned competent witnesses, personally came and appeared:

_____ (the "**Grantee**"), a _____, whose taxpayer identification number is xx-xxx_ _ _ , and whose mailing address is _____, appearing herein through _____, its duly authorized _____.

Section 4. The parties, after being duly sworn, declared as follows.

Section 5. Although this Acknowledgment of Sale Price (this "Acknowledgment") is executed on the dates set forth above, it is intended by the parties to be effective as of _____, 2023 (the "Effective Date").

Article II Acknowledgment of Sale Price

Section 6. The Grantor and the Grantee executed and delivered the Act of Sale, dated as of the Effective Date, a copy of which is attached hereto as Exhibit A (the "Act of Sale").

Section 7. The Act of Sale states that the sale price is not disclosed at the request of the parties. The Grantor and the Grantee hereby acknowledge that the sale price for the sale of the Property (as defined in the Act of Sale) by the Grantor to the Grantee is the sum of \$ _____, which amount was well and truly paid by the Grantee to the Grantor in ready and current money, the receipt and sufficiency of which are hereby acknowledged by the Grantor and for which the Grantor grants full acquittance and discharge.

Section 8. The Grantee may, but is not required to, register this instrument in the conveyance records for Bossier Parish, Louisiana.

[Signature pages follow]

Article III Closing and Signatures

Section 9. Thus done and passed in _____, _____, on _____, 2023, but effective as of the Effective Date, in the presence of the undersigned competent witnesses, who hereunto sign their names with the Grantor and me, notary, after due reading of the whole.

WITNESSES:

Print Name: _____

Print Name: _____

GRANTOR:

By: _____
Name: _____
Title: _____

Notary Public
Print Name: _____
Notary I.D./Bar No. (As Applicable): _____
Parish/County, _____
My commission expires: _____

Section 10. Thus done and passed in _____, _____, on _____, 2023, but effective as of the Effective Date, in the presence of the undersigned competent witnesses, who hereunto sign their names with the Grantee and me, notary, after due reading of the whole.

WITNESSES:

Print Name: _____

Print Name: _____

GRANTOR:

By: _____

Name: _____

Title: _____

Notary Public

Print Name: _____

Notary I.D./Bar No. (As Applicable): _____

Parish/County, _____

My commission expires: _____

Exhibit A
Act of Sale
See Attached.

SCHEDULE 3(c)

ALLOCATION OF PURCHASE PRICE

[*]

SCHEDULE 6(b)

DUE DILIGENCE MATERIALS

With respect to each Property:

[*]

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

**FIRST AMENDMENT TO
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**

This First Amendment to Agreement for Purchase and Sale of Real Property (this “**Amendment**”) is made and entered into as of this 31st day of July, 2023 (the “**Effective Date**”), by and between **BIG Portfolio Owner LLC**, **BIG SATX Owner LLC**, **BIG DETX Owner LLC**, **BIG AVCA Owner LLC**, and **BIG FBTX Owner LLC**, each a Delaware limited liability company (“**Buyer**”), and **Big Lots Stores, LLC**, an Ohio limited liability company (“**BLS SELLER**”), **Big Lots Stores – PNS, LLC**, a California limited liability company (“**PNS SELLER**”), **Big Lots Stores – CSR, LLC**, an Ohio limited liability company (“**Big Lots CSR**”), and **AVDC, LLC**, an Ohio limited liability company (“**AVDC SELLER**”; AVDC Seller, BLS Seller, PNS Seller, and Big Lots CSR, collectively, “**Seller**”).

WITNESSETH:

WHEREAS, Buyer and Seller are parties to that certain Agreement for Purchase and Sale of Real Property dated as of June 30, 2023 (as may have been or may be amended, restated, supplemented, and otherwise modified from time to time, the “**Purchase Agreement**”), wherein Buyer agreed to purchase the Property (as defined in the Purchase Agreement) subject to the terms and conditions therein;

WHEREAS, Buyer and Seller desire to amend the Purchase Agreement as more particularly set forth herein.

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

1. **Incorporation and Definitions.** The recitals, schedules, and exhibits of this Amendment are incorporated herein by this reference. Initial capitalized terms used but not defined in this Amendment shall have the meanings ascribed to such terms in the Purchase Agreement.

2. **Amendments.**

(a) The Purchase Agreement is hereby amended to add Big Lots CSR as a “Seller” thereunder. All representations and warranties made by “Seller” under the Purchase Agreement shall be deemed to have also been made by Big Lots CSR; provided, however, that the following representation and warranty is hereby added to Section 11(a) of the Purchase Agreement: “Big Lots CSR is duly organized (or formed), validly existing and in good standing under the laws of the State of Ohio.”

(b) Section 1(u) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“‘**Examination Period**’ shall mean the period beginning on the Effective Date and extending until 6:00 p.m. (New York, New York time) on August 4, 2023; as it may be extended pursuant to Section 6(b).”

- (c) Section 1 of the Purchase Agreement is hereby amended to add the following definitions:

“Denton Buffet Lease” shall mean that certain Lease dated as of May 13, 2009, by and between Big Lots Stores – PNS, LLC (successor in interest to PNS Stores, Inc.), as landlord, and Li Feng Li, as tenant, as amended by extension option exercise email dated as of July 11, 2017, and as amended by extension option exercise letter dated as of March 22, 2023.

“National City Jo-Ann Lease” shall mean that certain Lease dated as of September 6, 1988, by and between Big Lots Stores – PNS, LLC (successor in interest to Pic ‘N’ Save Stores, Inc.), as landlord, and Jo-Ann Stores, LLC (successor in interest to House of Fabrics, Inc.), as tenant, as amended by that certain First Amendment to Lease dated as of October 13, 2008, as amended by that certain Second Amendment to Lease dated as of January 31, 2011, as amended by extension option exercise letter dated as of June 19, 2013, as amended by extension option exercise letter dated as of July 2, 2019, and as amended by that certain Third Amendment to Lease dated as of November 21, 2022.

“National City Key Shop License” shall mean that certain License Agreement dated as of July 1, 2013, by and between ROIC California, LLC, as licensor, and Miaad I.S. Aalshaeai, as licensee, as amended by that certain First Amendment to License Agreement dated as of February 5, 2018.

“Buena Park Dollar Tree Lease” shall mean that certain Lease Agreement dated as of August 23, 2011, by and between Big Lots Stores – PNS, LLC (successor in interest to PNS Stores, Inc.), as landlord, and Dollar Tree Stores, Inc., as tenant, as amended by that certain renewal option exercise letter dated as of July 11, 2016, and as amended by that certain renewal option exercise letter dated as of July 22, 2021.

“Miami SunTrust Lease” shall mean that certain ATM Lease dated as of June 23, 2017, by and between Big Lots Stores – PNS, LLC (successor in interest to PNS Stores, Inc.), as landlord, and Truist Bank (successor in interest to SunTrust Bank), as tenant, and as amended by extension option exercise letter dated as of July 18, 2022.

“Elyria Ground Lease” shall mean that certain ground lease with 853 Cleveland Street LLC, as ground tenant.

“Elyria Dollar Tree Lease” shall mean that certain Lease dated as of September 20, 2004, by and between 853 Cleveland Street, LLC (successor in interest to DDR Ohio Opportunity II, LLC), as landlord, and Dollar Tree Stores, Inc., as tenant, as amended by that certain Extension and Modification of Lease dated as of October 29, 2009, as amended by that

certain undated Second Extension and Modification of Lease, and as amended by that certain Third Amendment to Lease dated as of April 22, 2020.

- (d) Section 11(g) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“(g) Other than the Rally’s Lease, the Wendy’s Lease, the Denton Buffet Lease, the National City Jo-Ann Lease, the National City Key Shop License, the Buena Park Dollar Tree Lease, the Miami SunTrust Lease, the Elyria Ground Lease, and the Elyria Dollar Tree Lease, there are no occupancy rights, leases, subleases, ground leases or tenancies affecting the Properties;”

(e) Notwithstanding anything to the contrary in the Purchase Agreement, the parties hereto acknowledge and agree that, at Closing, Tenant shall enter into separate leases with respect to each Property, which separate leases shall be in form and substance consistent with the Lease attached to the Purchase Agreement as Exhibit C, but limited to the applicable Property; provided, however, that [(1) such separate leases shall be crossed defaulted via a customary cross default provision that is in form and substance reasonably satisfactory to Tenant and the parties hereto, and] (2) such separate leases shall contain a provision stating as follows: “To the extent that there are any leases, subleases, license, occupancy agreements, or similar agreements affecting the Premises as of the date hereof (including, without limitation, the Rally’s Lease, the Wendy’s Lease, the Denton Buffet Lease, the National City Jo-Ann Lease, the Buena Park Dollar Tree Lease, the Miami SunTrust Lease, [and the Elyria Ground Lease] (each of the foregoing as defined in the Purchase Agreement)), such agreements shall be treated as if they were subleases, sublicenses, or similar agreements; Tenant shall remain the landlord, licensor, or similar party under such agreements; Tenant shall timely perform all obligations under such agreements; and Tenant shall protect, indemnify, defend and hold harmless all Landlord Indemnified Parties from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, losses, costs, fees and expenses, including without limitation reasonable counsel fees and court costs, to the maximum extent permitted by Law, imposed upon, asserted against or suffered or incurred by any Indemnified Party directly or indirectly which arise out of, are occasioned by, or are in any way attributable to or related to such agreements.” At Closing, Seller shall cause to be delivered two (2) originals of each of such separate leases. This Section 2(d) shall be deemed to modify Section 10(i)(i) of the Purchase Agreement.

(f) Notwithstanding anything to the contrary in the Purchase Agreement, the parties hereto acknowledge and agree that, at Closing, Guarantor shall enter into separate guaranties with respect to each Property, which separate guaranties shall be in form and substance consistent with the Guaranty attached to the Lease attached to the Purchase Agreement as Exhibit C, but limited to the applicable Property. At Closing, Seller shall cause to be delivered two (2) originals of each of such separate guaranties. This Section 2(3) shall be deemed to modify Section 10(i)(ii) of the Purchase Agreement.

(g) The Purchase Agreement is hereby amended to add the following as Section 10(x):

“(x) With respect to any leases, subleases, license, occupancy agreements, or similar agreements affecting the Premises as of the Closing Date (including, without limitation, the Rally’s Lease, the Wendy’s Lease, the Denton Buffet Lease, the National City Jo-Ann Lease, the Buena Park Dollar Tree Lease, the Miami SunTrust Lease, and the Elyria Ground Lease) to which any Seller is party, an assignment and assumption of such agreements to Tenant, in form and substance reasonably satisfactory to Seller, Tenant, and Buyer.”

(h) The first sentence of Section 10 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“Subject to the terms and conditions of this Agreement, the closing of the transaction hereunder (the “Closing Date”) shall occur on August 25, 2023.”

(i) For the avoidance of doubt, the parties hereto agree that Buyer shall have the right to include in its Objections issued prior to the expiration of the Examination Period a statement of any defects with respect to the Zoning Reports, the Environmental Reports, the PCRs, and other diligence reports received by Buyer (including seismic reports), and the procedures set forth in Section 6(a) shall also govern such Objections.

(j) On or before Friday, August 4, 2023, Buyer shall deliver to Title Insurer an incremental earnest money deposit in the amount [*], which shall be deposited in escrow with Title Insurer, to be applied as part payment of the Purchase Price on the Closing Date, or otherwise disbursed as agreed upon in accordance with the terms of the Purchase Agreement. From and after the date hereof, the “Earnest Money” as used in the Purchase Agreement shall mean the [*] (together with all interest accrued thereon).

3. Ratification and Affirmation of Purchase Agreement. Except as expressly provided herein, the Purchase Agreement shall remain unchanged and in full force and effect; provided, that to the extent this Amendment conflicts with the Purchase Agreement, the provisions of this Amendment shall control. From and after the date hereof, the “Purchase Agreement” shall mean and refer to the Purchase Agreement as amended by this Amendment. The terms of the Purchase Agreement, as modified hereby, are ratified and affirmed by the parties hereto.

4. Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of such counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of this Amendment by electronic means shall be equally as effective as delivery of a manually executed original counterpart of this Amendment.

5. Successors and Assigns. This Amendment shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the respective parties hereto.

6. Headings. The headings of the various Sections of this Amendment have been inserted only for convenience and shall not be deemed in any manner to modify or limit any of the provisions of this Amendment or be used in any manner in the interpretation of this Amendment.

7. Entire Agreement; Authorization. This Amendment contains the entire agreement between the parties hereto with respect to the subject matter of this Amendment, and supersedes all prior understandings, agreements and representations, if any, with respect to such subject matter. The parties' respective signatories below have been duly authorized to execute and deliver this Amendment.

[Signatures Follow]

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the Effective Date.

SELLER:

Big Lots Stores, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

Big Lots Stores – PNS, LLC, a California limited liability
company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

AVDC, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

Big Lots Stores – CSR, LLC, an Ohio limited liability
company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

BUYER:

BIG Portfolio Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG SATX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG DETX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG FBTX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG AVCA Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

JOINDER BY BIG LOTS, INC.

Big Lots, Inc., an Ohio corporation and the parent of the Seller, hereby joins in the execution of this Amendment to evidence its agreement to be bound by all of the terms and conditions set forth herein and to guaranty the payment and performance of all of the obligations of Seller hereunder.

BIG LOTS, INC., an Ohio corporation

By:	<u>/s/ Jonathan Ramsden</u>
Name:	<u>Jonathan Ramsden</u>
Title:	<u>EVP, CF&AO</u>

ACKNOWLEDGED AND AGREED TO BY:

TITLE INSURER:

Chicago Title Insurance Company

By: /s/ Rebecca L. Radabaugh
Name: Rebecca Radabaugh
Title: Assistant Vice President

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

**SECOND AMENDMENT TO
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**

This Second Amendment to Agreement for Purchase and Sale of Real Property (this “**Amendment**”) is made and entered into as of this 4th day of August, 2023 (the “**Effective Date**”), by and between **BIG Portfolio Owner LLC**, **BIG SATX Owner LLC**, **BIG DETX Owner LLC**, **BIG AVCA Owner LLC**, and **BIG FBTX Owner LLC**, each a Delaware limited liability company (“**Buyer**”), and **Big Lots Stores, LLC**, an Ohio limited liability company (“**BLS SELLER**”), **Big Lots Stores – PNS, LLC**, a California limited liability company (“**PNS SELLER**”), **Big Lots Stores – CSR, LLC**, an Ohio limited liability company (“**Big Lots CSR**”), and **AVDC, LLC**, an Ohio limited liability company (“**AVDC SELLER**”; AVDC Seller, BLS Seller, PNS Seller, and Big Lots CSR, collectively, “**Seller**”).

WITNESSETH:

WHEREAS, Buyer and Seller are parties to that certain Agreement for Purchase and Sale of Real Property dated as of June 30, 2023 (the “**Original Purchase Agreement**”), as amended by that certain First Amendment to Agreement for Purchase and Sale of Real Property dated as of July 31, 2023 (the “**First Amendment**”) (the Original Purchase Agreement as amended by the First Amendment, and as may have been or may be further amended, restated, supplemented, and otherwise modified from time to time, the “**Purchase Agreement**”), wherein Buyer agreed to purchase the Property (as defined in the Purchase Agreement) subject to the terms and conditions therein;

WHEREAS, Buyer and Seller desire to amend the Purchase Agreement as more particularly set forth herein.

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

1. **Incorporation and Definitions.** The recitals, schedules, and exhibits of this Amendment are incorporated herein by this reference. Initial capitalized terms used but not defined in this Amendment shall have the meanings ascribed to such terms in the Purchase Agreement.

2. **Amendments.**

(a) **Section 17** of the Purchase Agreement is hereby deleted in its entirety and amended to read as follows:

“Section 17. Financial Strength Parameters.

Pursuant to **Section 10** of this Agreement, at Closing, Seller will apply all proceeds generated by the sale of the Properties pursuant to this Agreement as follows: (1) first, to pay off the AVDC Synthetic Lease, and (2) second, to pay the remainder of such proceeds to PNC Bank, National Association, as Administrative Agent under Guarantor’s Credit Facility, to be applied as

a pay down of Guarantor's revolving loans outstanding thereunder in the amount of the Prepayment; provided that nothing in this Section 17 (a) shall require a permanent reduction of the commitments under the Guarantor's Credit Facility or (b) except as set forth in the next sentence, in any way restrict Guarantor's ability to make borrowings under Guarantor's Credit Facility following the Closing Date. Until the six month anniversary of the Closing Date (the "Condition End Date"), at any time that Availability as of the end of the most recently ended fiscal quarter for which a 10-Q or 10-K, as applicable, has been filed is less than \$500 million, Guarantor will not make any new drawings of revolving loans under Guarantor's Credit Facility for any purpose other than working capital, general corporate, operational requirements or capital expenditures, as determined by Guarantor in its commercially reasonable discretion, until such earlier time as (x) the time that Availability exceeds \$500 million as of the end of any subsequent fiscal quarter for which a 10-Q or 10-K has been filed or (y) the Condition End Date. For purposes hereof, "Availability" means "Availability" as defined in Guarantor's Credit Facility or any substantially similar term in any replacement to Guarantor's Credit Facility and after giving pro forma effect to the Prepayment at any time following the end of the applicable fiscal quarter-end if Availability does not reflect such Prepayment as if such Prepayment occurred during the applicable fiscal quarter. Notwithstanding anything to the contrary in this Agreement, Seller and Guarantor shall reserve and maintain sufficient liquidity to fully address the roof repairs described in Section 4 of the Columbus DC Lease Amendment. This Section 17 shall survive the Closing."

- (b) The Purchase Agreement is hereby amended to add the following as Section 10(y):

"(y) the Post-Closing Matters Agreement in the form attached hereto as Exhibit J."

- (c) The Post-Closing Matters Agreement attached hereto as Schedule I is hereby incorporated into the Purchase Agreement as Exhibit J thereto.

- (d) Exhibit C of the Purchase Agreement is hereby deleted in its entirety and replaced with the Lease attached hereto as Schedule II. The "Lease" as used in the Purchase Agreement shall mean the Lease attached hereto as Schedule II.

- (e) The parties hereto acknowledge and agree that Phase II environmental site assessments (the "**Phase IIs**") are required with respect to those certain Properties commonly known as 8932 Valley View Street, Buena Park, California, and 2100 Southwest 27th Avenue, Miami, Florida (collectively, the "**Phase II Properties**"). The parties acknowledge and agree that, as to each of the Phase II Properties, the Examination Period, together with all of Buyer's rights and remedies with respect thereto, shall remain ongoing and unexpired until 6:00 p.m. Eastern Time on the date that is five (5) days after Buyer's receipt of the completed Phase IIs (the "**Phase II Property Deadline**"). Buyer

shall have the right to review such Phase IIs and partially terminate the Purchase Agreement as to such Phase II Properties if the results of the Phase IIs are not satisfactory to Buyer, on or before the Phase II Property Deadline, in which event the Purchase Agreement shall be deemed terminated solely with respect to the applicable Phase II Property, the Purchase Price shall be reduced by the applicable Allocated Purchase Price attributable to the applicable Phase II Property, the Title Insurer shall immediately return to Buyer the portion of Earnest Money attributable to the applicable Phase II Property (in proportion of the applicable Allocated Purchase Price) and thereafter the parties shall have no further rights or obligations under the Purchase Agreement with respect to the applicable Phase II Property except for those that expressly survive termination under the Purchase Agreement. The Closing Date as to the Phase II Properties shall occur on the date that is fifteen (15) days after the Phase II Property Deadline. The Earnest Money attributable to the applicable Phase II Properties (in proportion of the applicable Allocated Purchase Price) shall continue to be held pursuant to the Purchase Agreement pending the Closing as to the Phase II Properties.

(f) The parties hereto acknowledge and agree that it is necessary for Seller to coordinate and complete an inspection with respect to that certain Property commonly known as 23351 Eureka Road, Taylor, MI, in accordance with all applicable laws and municipal ordinances. To the extent that the results of such inspection reveal any repairs necessary for such Property, then such repairs shall be a condition precedent under Section 13 of the Purchase Agreement, and such repairs shall be at Seller's sole cost and expense.

(g) Section 2(e) of the First Amendment is hereby amended to remove the brackets around "[and the Elyria Ground Lease]" (so that such brackets are not present, but such reference to the Elyria Ground Lease remains), and to delete the following portion of said Section 2(e): "[(1) such separate leases shall be crossed defaulted via a customary cross default provision that is in form and substance reasonably satisfactory to Tenant and the parties hereto, and]" (i.e., there will be no such cross default provision in the separate leases described therein).

3. Ratification and Affirmation of Purchase Agreement. Except as expressly provided herein, the Purchase Agreement shall remain unchanged and in full force and effect; provided, that to the extent this Amendment conflicts with the Purchase Agreement, the provisions of this Amendment shall control. From and after the date hereof, the "Purchase Agreement" shall mean and refer to the Purchase Agreement as amended by this Amendment. The terms of the Purchase Agreement, as modified hereby, are ratified and affirmed by the parties hereto.

4. Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of such counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of this Amendment by electronic means shall be equally as effective as delivery of a manually executed original counterpart of this Amendment.

5. Successors and Assigns. This Amendment shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the respective parties hereto.

6. Headings. The headings of the various Sections of this Amendment have been inserted only for convenience and shall not be deemed in any manner to modify or limit any of the provisions of this Amendment or be used in any manner in the interpretation of this Amendment.

7. Entire Agreement; Authorization. This Amendment contains the entire agreement between the parties hereto with respect to the subject matter of this Amendment, and supersedes all prior understandings, agreements and representations, if any, with respect to such subject matter. The parties' respective signatories below have been duly authorized to execute and deliver this Amendment.

[Signatures Follow]

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the Effective Date.

SELLER:

Big Lots Stores, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden

Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

Big Lots Stores – PNS, LLC, a California limited liability company

By: /s/ Jonathan Ramsden

Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

AVDC, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden

Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

Big Lots Stores – CSR, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden

Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

BUYER:

BIG Portfolio Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG SATX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG DETX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG FBTX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG AVCA Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

JOINDER BY BIG LOTS, INC.

Big Lots, Inc., an Ohio corporation and the parent of the Seller, hereby joins in the execution of this Amendment to evidence its agreement to be bound by all of the terms and conditions set forth herein and to guaranty the payment and performance of all of the obligations of Seller hereunder.

BIG LOTS, INC., an Ohio corporation

By: /s/ Jonathan Ramsden

Name: Jonathan Ramsden

Title: EVP, CF&AO

ACKNOWLEDGED AND AGREED TO BY:

TITLE INSURER:

Chicago Title Insurance Company

By:	<u>/s/ Rebecca L. Radabaugh</u>
Name:	<u>Rebecca L. Radabaugh</u>
Title:	<u>Assistant Vice President</u>

Schedule I

[See attached]

POST-CLOSING MATTERS AGREEMENT

THIS POST-CLOSING MATTERS AGREEMENT (as amended, modified and in effect from time to time, this “Agreement”) dated and made effective as of August __, 2023 (the “Effective Date”), is by and among **BIG Portfolio Owner LLC, BIG SATX Owner LLC, BIG DETX Owner LLC, BIG AVCA Owner LLC, and BIG FBTX Owner LLC**, each a Delaware limited liability company (“**Buyer**”), and **Big Lots Stores, LLC**, an Ohio limited liability company (“**BLS SELLER**”), **Big Lots Stores – PNS, LLC**, a California limited liability company (“**PNS SELLER**”), **Big Lots Stores – CSR, LLC**, an Ohio limited liability company (“**Big Lots CSR**”), and **AVDC, LLC**, an Ohio limited liability company (“**AVDC SELLER**”; AVDC Seller, BLS Seller, PNS Seller, and Big Lots CSR, collectively, “**Seller**”), and **BLBO Tenant, LLC**, an Ohio limited liability company (“**Tenant**”).

WHEREAS, Buyer and Seller are parties to that certain Agreement for Purchase and Sale of Real Property dated as of June 30, 2023 (as may have been or may be amended, restated, supplemented, and otherwise modified from time to time, the “**Purchase Agreement**”);

WHEREAS, Buyer is willing to enter into the transactions contemplated by the Purchase Agreement and Lease, notwithstanding that certain matters will not have been satisfied by Seller and Tenant as of the Effective Date, on the condition that Seller and Tenant execute and deliver this Agreement; and

WHEREAS, all initial capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the respective Purchase Agreement.

NOW THEREFORE, in consideration of the undertaking by Seller and Buyer to consummate the transactions contemplated by the Purchase Agreement and the other documents and agreements contemplated thereby, Seller agrees with Buyer as follows:

1. Required Repairs; Violations; Certificates of Occupancy. Without limiting Tenant’s obligations under the Lease, Seller and Tenant shall complete the work set forth on Exhibit A hereto, cure the violations set forth on Exhibit A hereto, and obtain the Certificates of Occupancy set forth on Exhibit A hereto, each within the timeframes set forth thereon. With respect to the work described in Exhibit A, Section 2 (the “PCA/Seismic Work”), Seller shall submit for all required permits by the date that is ninety (90) days after the date hereof, and complete such PCA/Seismic Work by the date that is one (1) year after the date hereof (the “PCA/Seismic Deadline”). In the event Seller and Tenant have not satisfied their obligations set forth in this Section 1 by the applicable dates set forth on Exhibit A (or, with respect to the PCA/Seismic Work, by the PCA/Seismic Deadline), then, in addition to Buyer’s other remedies set forth in the Lease, Buyer may complete the applicable actions at Seller’s and Tenant’s cost (Seller and Tenant to reimburse Buyer for such reasonable out-of-pocket costs incurred by Buyer within fifteen (15) days after an invoice therefor), but neither such deadline nor such election by Buyer shall diminish Seller’s and Tenant’s obligation under the first sentence of this Section 1, provided that upon payment of applicable costs, completion of the applicable work, curing of the violation or obtaining of a Certificate of Occupancy, the matter shall be deemed cured and no longer a default or potential event of default under this Agreement or the Lease.

2. Estoppels. Seller and Tenant acknowledge and agree that Buyer has, prior to the date hereof, circulated to Seller and Tenant various estoppel certificates and requested that Seller and Tenant promptly obtain such estoppel certificates. To the extent that fully executed copies of any such estoppel certificates have not been delivered to Buyer as of the date hereof, Seller and Tenant shall continue to use continuous, commercially reasonable efforts to obtain such

estoppel certificates. In the event Seller and Tenant have not obtained such estoppel certificates by the date that is sixty (60) days after the date hereof, then Buyer may seek such estoppel certificates at Seller's and Tenant's reasonable out-of-pocket costs incurred by Buyer not to exceed \$1,000 per estoppel certificate not received prior to the initial closing contemplated in the Purchase Agreement (Seller and Tenant to reimburse Buyer for such reasonable out-of-pocket costs within fifteen (15) days after an invoice therefor), but neither such deadline nor such election by Buyer shall diminish Seller's and Tenant's obligation under the second sentence of this Section 4.

3. Default; Survival. If Seller or Tenant defaults in their obligations under this Agreement by the applicable deadlines set forth in this Agreement, such default shall be an immediate Event of Default under the Lease entitling Buyer (as landlord) to pursue any and all remedies under the Lease. All matters set forth in this Agreement shall survive the Closing and delivery of the Deeds (each as defined in the Purchase Agreement).

4. Force Majeure. If Seller or Tenant is delayed, hindered or prevented from performing any act required under this Agreement by reason of strikes, lockouts, inability to procure materials, failure of power, restrictive governmental laws or regulations, pandemic, or any other reason of a like nature not within the reasonable control of the delayed party, then performance of such act shall be excused for the period of the delay, and the period allowed for the performance of such act shall be extended for a period equivalent to the period of such delay. The foregoing shall not apply to Seller's or Tenant's obligation to pay funds to complete an act required under this Agreement.

5. Notices. All notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given on the date: (i) delivered in person; (ii) deposited in the United States mail, registered or certified, return receipt requested; (iii) delivery via electronic mail to the addresses set forth below; or (iv) deposited with a nationally recognized overnight courier, to the addresses set forth below. Such notices shall be deemed effective upon receipt (or, if sent by e-mail, upon sending with no rejection thereof). Any address or name specified below may be changed by notice given to the addressee by the other party in accordance with this Section 5. Anything to the contrary notwithstanding, if notice cannot be delivered because of a changed address of which no notice was given as provided, above, or because of rejection or refusal to accept any notice, then receipt of such notice shall be deemed to be as of the date of inability to deliver or rejection or refusal to accept. Any notice to be given by any party may be given by the counsel for such party.

Notice Address of Buyer:

c/o Oak Street Real Estate Capital, LLC
30 N. LaSalle St., Suite 4140
Chicago, IL 60602

Attn: Asset Management
Email: oakstreetAM@blueowl.com

With a copy to:

Kirkland & Ellis LLP
300 N. LaSalle Street
Chicago, Illinois 60654
Attn.: David A. Rosenberg, P.C. & David P. Stanek
Email: david.rosenberg@kirkland.com & david.stanek@kirkland.com

Notice Address of Seller and Tenant:

Big Lots, Inc.
4900 East Dublin Granville Road
Columbus, OH 43081
Attn: Steve Hutkai
VP, Tax and Treasurer
Email: shutkai@biglots.com

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

With a copy to:

Jacinto A. Núñez
Vorys, Sater, Seymour and Pease LLP
50 S. Main Street
Suite 1200
Akron, OH 44308
Email: janunez@vorys.com

6. Assignment; Binding on Successors and Assigns. This Agreement may not be assigned by Seller without the prior written consent of Buyer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement.

8. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED UNDER AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS, AS OPPOSED TO THE CONFLICT OF LAWS PROVISIONS, OF THE STATE OF ILLINOIS.

9. No Waiver. The waivers and consents contained in this Agreement are limited to the specifics hereof, shall not apply with respect to any facts or occurrences other than those on which the same are based, shall not excuse future non-compliance with the Purchase Agreement, Lease, or any other instruments or agreements relating to the transactions described herein, and, except as expressly set forth herein, shall not operate as a waiver or an amendment of any right, power or remedy of Seller or Buyer, nor as a consent to any further or other matter, under the Purchase Agreement, Lease, any other instruments or agreements relating to the transactions described herein. No waiver, and no modification or amendment of any provision of this Agreement shall be effective unless specifically made in writing and duly signed by the party purportedly making such waiver.

10. Counterparts. This Agreement may be delivered by facsimile and executed in one or more counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which counterparts taken together shall constitute but one and the same Agreement.

11. Titles. Paragraph and subparagraph titles, captions and headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

12. Acknowledgment. Seller and Buyer affirm and acknowledge that this Agreement constitutes a Closing Document (as defined in each Purchase Agreement) and any reference to the Closing Documents under the Purchase Agreement contained in any notice, request, certificate or other document executed concurrently with or after the execution and delivery of this Agreement shall be deemed to include this Agreement unless the context shall otherwise specify.

[NO FURTHER TEXT ON PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date set forth above.

SELLER:

Big Lots Stores, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

Big Lots Stores – PNS, LLC, a California limited liability company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

AVDC, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

Big Lots Stores – CSR, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

TENANT:

BLBO TENANT, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

BUYER:

BIG Portfolio Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG SATX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG DETX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG FBTX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG AVCA Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

JOINDER BY BIG LOTS, INC.

Big Lots, Inc., an Ohio corporation and the parent of the Seller, hereby joins in the execution of this Agreement to evidence its agreement to be bound by all of the terms and conditions set forth herein and to guaranty the payment and performance of all of the obligations of Seller and Tenant hereunder.

BIG LOTS, INC., an Ohio corporation

By: /s/ Jonathan Ramsden
Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

EXHIBIT A

[*]

2. Repairs Reflected in Property Condition Reports and Seismic Reports

[*]

Schedule II

[See attached]

Master Lease Agreement

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

**THIRD AMENDMENT TO
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**

This Third Amendment to Agreement for Purchase and Sale of Real Property (this “**Amendment**”) is made and entered into as of this 15th day of August, 2023 (the “**Effective Date**”), by and between **BIG Portfolio Owner LLC**, **BIG SATX Owner LLC**, **BIG DETX Owner LLC**, **BIG AVCA Owner LLC**, and **BIG FBTX Owner LLC**, each a Delaware limited liability company (“**Buyer**”), and **Big Lots Stores, LLC**, an Ohio limited liability company (“**BLS SELLER**”), **Big Lots Stores – PNS, LLC**, a California limited liability company (“**PNS SELLER**”), **Big Lots Stores – CSR, LLC**, an Ohio limited liability company (“**Big Lots CSR**”), and **AVDC, LLC**, an Ohio limited liability company (“**AVDC SELLER**”; AVDC Seller, BLS Seller, PNS Seller, and Big Lots CSR, collectively, “**Seller**”).

WITNESSETH:

WHEREAS, Buyer and Seller are parties to that certain Agreement for Purchase and Sale of Real Property dated as of June 30, 2023 (the “**Original Purchase Agreement**”), as amended by that certain First Amendment to Agreement for Purchase and Sale of Real Property dated as of July 31, 2023 (the “**First Amendment**”), as amended by that certain Second Amendment to Agreement for Purchase and Sale of Real Property dated as of August 4, 2023 (the “**Second Amendment**”) (the Original Purchase Agreement as amended by the First Amendment and the Second Amendment, and as may have been or may be further amended, restated, supplemented, and otherwise modified from time to time, the “**Purchase Agreement**”), wherein Buyer agreed to purchase the Property (as defined in the Purchase Agreement) subject to the terms and conditions therein;

WHEREAS, Buyer and Seller desire to amend the Purchase Agreement as more particularly set forth herein.

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

1. **Incorporation and Definitions.** The recitals, schedules, and exhibits of this Amendment are incorporated herein by this reference. Initial capitalized terms used but not defined in this Amendment shall have the meanings ascribed to such terms in the Purchase Agreement.

2. **Amendments.**

(a) The Post-Closing Matters Agreement attached as Exhibit J of the Purchase Agreement is hereby deleted in its entirety and replaced by the Post-Closing Matters Agreement attached hereto as Schedule I.

(b) The parties hereto acknowledge and agree that a certain Notice of Pendency of Administrative Proceedings recorded as of May 10, 2021, as Instrument No. 2021-0214682 in the Official Records of San Bernadino County, California, and the proceedings and violations related thereto (the “Fontana Administrative Proceedings”), are not

Permitted Exceptions, and Seller shall, at Seller's sole cost and expense and as a condition precedent to Closing, complete all required repairs and take all actions necessary for the resolution, dismissal, and release in full of the Fontana Administrative Proceedings (including, without limitation, any required reinspection thereof).

(c) Seller hereby represents and warrants that the required local inspection with respect to that certain Property commonly known as 23351 Eureka Road, Taylor, MI has occurred, and the report of required repairs resulting from such inspection is attached hereto as Schedule II (collectively, the "Taylor Repairs"). The parties hereto acknowledge and agree that the completion in full of Taylor Repairs, together with a reinspection evidencing no further repairs or actions are required under applicable laws and ordinances, shall be a condition precedent under Section 13 of the Purchase Agreement, and such Taylor Repairs shall be at Seller's sole cost and expense.

(d) The parties hereto acknowledge and agree that Buyer has exercised its exclusion rights pursuant to Section 6(d) of the Purchase Agreement as to the following two properties: (1) 3140 Cerrillos Rd, Santa Fe, NM, and (2) 825 Cleveland St, Elyria, OH (collectively, the "Excluded Properties"). The Purchase Agreement is hereby amended to delete all references to such Excluded Properties from the Purchase Agreement. In connection therewith:

(i) Schedule 3(c) of the Purchase Agreement is hereby deleted in its entirety and replaced with the Schedule 3(c) attached hereto as Schedule III.

(ii) The definition of "Purchase Price" in the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

"(qq) "**Purchase Price**" shall mean the [*]."

(iii) The definition of "Earnest Money" in the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

"(q) "**Earnest Money**" shall mean the [*] (together with all interest accrued thereon)."

(iv) The Purchase Agreement is hereby amended to delete the definitions of "Elyria Property", "Elyria Ground Lease", "Elyria Dollar Tree Lease", and "Big Lots CSR" in their entirety.

(v) Section 5 of the Purchase Agreement is hereby amended to replace the clause, "(g) with respect to the Elyria Property, a deed in the form attached as Exhibit B-7" with the following: "(g) [intentionally omitted]".

(vi) Section 10 of the Purchase Agreement is hereby amended to replace the clause, “(g) With respect to the Elyria Property, an original deed in the form attached hereto as Exhibit B-7, executed by the applicable Seller Entity and conveying the Elyria Property to Buyer (or its designee or permitted assignee) subject only to the Permitted Exceptions” with the following: “(g) [intentionally omitted]”.

(vii) Section 10(x) of the Purchase Agreement is hereby amended to delete the reference to “the Elyria Ground Lease” in its entirety.

(viii) Section 11(g) of the Purchase Agreement is hereby amended to delete the references to “the Elyria Ground Lease” and “the Elyria Dollar Tree Lease” in their entirety.

(ix) Exhibit A of the Purchase Agreement is hereby amended to delete the two rows corresponding to the Excluded Properties.

(x) Exhibit B-7 of the Purchase Agreement is hereby deleted in its entirety.

(xi) Section 2(e) of the First Amendment is hereby amended to delete the reference to “the Elyria Ground Lease” in its entirety.

(xii) The parties hereto acknowledge and agree that the portion of the Earnest Money attributable to the Excluded Properties is the [*]. The parties hereto hereby jointly direct Title Insurer to immediately refund such sum to Buyer in accordance with wire instructions provided by Buyer.

(xiii) The parties acknowledge and agree that the sharing of costs of the Third Party Reports described in Section 2(c)(v) shall occur as part of the settlement statement at Closing (or, if the Closing does not occur, within ten (10) days after receipt of an invoice therefor).

(e) Seller hereby acknowledges and agrees that, in accordance with Section 30 of the Purchase Agreement, Buyer has directed Seller to transfer the individual Properties to the designees set forth in Schedule IV attached hereto. Notwithstanding anything to the contrary in the Purchase Agreement (including, without limitation, Section 33 therein), the designees set forth in such Schedule IV shall receive the Closing Documents to the respective Properties described in such Schedule IV, and shall be the “Landlord” under the individual Leases for such respective Properties. Buyer’s rights as to such respective Properties shall run to such respective designees.

(f) The parties hereto acknowledge and agree that Seller has received two estoppel certificates relating to 12550 Central Ave, Chino, CA, dated as of July 19, 2023, and August 1, 2023, respectively, wherein the parties thereto assert the existence of a certain Parking Lot Maintenance Agreement dated as of March 2, 1966, and related agreements, and certain breaches and defaults of Seller thereunder (collectively, the “Parking Matters”). Seller and Tenant shall protect, indemnify, defend and hold harmless

Buyer, Landlord (as defined in the Lease for such Property), and Buyer's and Landlord's current and future lenders, and each of their respective successors, assigns, and designees (including, without limitation, BIG CHCA Owner LLC), and their respective members, managers, partners, shareholders, officers, directors, agents, attorneys and representatives (collectively, the "Landlord Indemnified Parties") from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, losses, costs, fees and expenses, including without limitation reasonable counsel fees and court costs, to the maximum extent permitted by all applicable statutes, ordinances, rules, regulations, codes, orders, requirements, directives, binding written interpretations and binding written policies, common law, rulings, and decrees of all local, municipal, state and federal governments, departments, agencies, commissions, boards or political subdivisions (collectively, "Law"), imposed upon, asserted against or suffered or incurred by any Landlord Indemnified Party directly or indirectly by reason of any claim, suit or judgment obtained or brought by or on behalf of any person or persons against any Landlord Indemnified Party, for damage, loss or expense, which arise out of, are occasioned by, or are in any way attributable to or related to the Parking Matters. Seller and Tenant, at their expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against any Landlord Indemnified Party ("Landlord Claim"). If at any time a Landlord Indemnified Party shall have received written notice of or shall otherwise be aware of any Landlord Claim which is subject to indemnity under this Section 2(f), such Landlord Indemnified Party shall give reasonably prompt written notice of such Landlord Claim to Seller and Tenant; provided, that, except to the extent Tenant is materially prejudiced in its defense of such Landlord Claim, (I) such Landlord Indemnified Party shall have no liability for a failure to give notice of any Landlord Claim, and (II) the failure of such Landlord Indemnified Party to give such a notice to Seller or Tenant shall not limit the rights of such Landlord Indemnified Party or the obligations of Seller or Tenant with respect to such Landlord Claim. This Section 2(f) shall indefinitely survive the Closing and delivery of the Deeds.

(g) Seller agrees that Seller's owner's affidavit with respect to that certain Property commonly known as 1070 W Avenue K STE A, Lancaster, CA, shall include a statement that there are no leases affecting such Property, which shall be in form and substance acceptable for the Title Insurer to delete Exception 13 of that certain title commitment dated as of March 15, 2023, Order No. 00190919-987-OC1-JS9.

3. Ratification and Affirmation of Purchase Agreement. Except as expressly provided herein, the Purchase Agreement shall remain unchanged and in full force and effect; provided, that to the extent this Amendment conflicts with the Purchase Agreement, the provisions of this Amendment shall control. From and after the date hereof, the "Purchase Agreement" shall mean and refer to the Purchase Agreement as amended by this Amendment. The terms of the Purchase Agreement, as modified hereby, are ratified and affirmed by the parties hereto.

4. Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of such counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of this Amendment by electronic means shall be equally as effective as delivery of a manually executed original counterpart of this Amendment.

5. Successors and Assigns. This Amendment shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the respective parties hereto.

6. Headings. The headings of the various Sections of this Amendment have been inserted only for convenience and shall not be deemed in any manner to modify or limit any of the provisions of this Amendment or be used in any manner in the interpretation of this Amendment.

7. Entire Agreement; Authorization. This Amendment contains the entire agreement between the parties hereto with respect to the subject matter of this Amendment, and supersedes all prior understandings, agreements and representations, if any, with respect to such subject matter. The parties' respective signatories below have been duly authorized to execute and deliver this Amendment.

[Signatures Follow]

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the Effective Date.

SELLER:

Big Lots Stores, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden

Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

Big Lots Stores – PNS, LLC, a California limited liability
company

By: /s/ Jonathan Ramsden

Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

AVDC, LLC, an Ohio limited liability company

By: /s/ Jonathan Ramsden

Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

Big Lots Stores – CSR, LLC, an Ohio limited liability
company

By: /s/ Jonathan Ramsden

Jonathan Ramsden, Executive Vice President
and Chief Financial and Administrative Officer

BUYER:

BIG Portfolio Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG SATX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG DETX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG FBTX Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

BIG AVCA Owner LLC,
a Delaware limited liability company

By: /s/ Michael Reiter
Name: Michael Reiter
Title: Authorized Representative

JOINDER BY BIG LOTS, INC.

Big Lots, Inc., an Ohio corporation and the parent of the Seller, hereby joins in the execution of this Amendment to evidence its agreement to be bound by all of the terms and conditions set forth herein and to guaranty the payment and performance of all of the obligations of Seller hereunder.

BIG LOTS, INC., an Ohio corporation

By:	<u>/s/ Jonathan Ramsden</u>
Name:	<u>Jonathan Ramsden</u>
Title:	<u>EVP, CF&AO</u>

ACKNOWLEDGED AND AGREED TO BY:

TITLE INSURER:

Chicago Title Insurance Company

By: /s/ Rebecca L. Radabaugh
Name: Rebecca L. Radabaugh
Title: Assistant Vice President

Schedule I

[See attached]

POST-CLOSING MATTERS AGREEMENT

Schedule II

[*]

Schedule III

[See attached]

SCHEDULE 3(c)

ALLOCATION OF PURCHASE PRICE

[*]

Schedule IV

[*]

**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: September 6, 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: September 6, 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 July 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: September 6, 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 July 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: September 6, 2023

By: /s/ Jonathan E. Ramsden

Jonathan E. Ramsden

Executive Vice President, Chief Financial and

Administrative Officer

(Principal Financial Officer)