

# DOLLAR GENERAL CORP

## FORM 10-K (Annual Report)

Filed 01/14/02 for the Period Ending 02/02/01

Address	100 MISSION RIDGE GOODLETTSVILLE, TN, 37072
Telephone	6158554000
CIK	0000029534
Symbol	DG
SIC Code	5331 - Retail-Variety Stores
Industry	Discount Stores
Sector	Consumer Cyclical
Fiscal Year	02/02

# DOLLAR GENERAL CORP

## FORM 10-K (Annual Report)

Filed 1/14/2002 For Period Ending 2/2/2001

Address	100 MISSION RIDGE GOODLETTSVILLE, Tennessee 37072
Telephone	615-855-4000
CIK	0000029534
Industry	Retail (Specialty)
Sector	Services
Fiscal Year	01/31

**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549  
**FORM 10-K**

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

For the fiscal year ended February 2, 2001

*Commission file number 0-4769*

**DOLLAR GENERAL CORPORATION**

(Exact name of Registrant as Specified in its Charter)

TENNESSEE  
(State or other jurisdiction of  
incorporation or organization)

61-0502302  
(I.R.S. Employer  
Identification Number)

**100 MISSION RIDGE**  
**GOODLETTSVILLE, TN 37072**  
(Address of principal executive offices, zip code)

Registrant's telephone number, including area code: (615) 855-4000

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

Title of Class -----	Name of the Exchange on which Registered -----
Common Stock	New York Stock Exchange
Series B Junior Participating Preferred Stock Purchase Rights	New York Stock Exchange

**Securities registered pursuant to Section 12(g) of the Act: None**

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 [ X ] Note: The Company did not timely file its Annual Report on Form 10-K for fiscal 2000 and its quarterly reports on Form 10-Q for the first three quarters of fiscal 2001 as a result of the restatement of the Company's financial statements described herein. Such Annual Report on Form 10-K is filed herewith, and such quarterly reports on Form 10-Q are being filed on the date hereof.

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [X]

Aggregate market value of the voting stock held by non-affiliates of the Registrant as of December 14, 2001, was \$3,935,877,699, based upon the last reported sale price on such date by the New York Stock Exchange.

The number of shares of common stock outstanding on December 14, 2001, was 332,577,284.

#### **Documents Incorporated by Reference**

Not applicable

The following text contains references to years 2002, 2001, 2000, 1999, 1998, 1997 and 1996, which represent fiscal years ending or ended January 31, 2003, February 1, 2002, February 2, 2001, January 28, 2000, January 29, 1999, January 30, 1998, and January 31, 1997, respectively. This discussion and analysis should be read with, and is qualified in its entirety by the consolidated financial statements and the notes thereto.

## **PART I**

### **ITEM 1. BUSINESS**

#### **General**

Dollar General Corporation (the "Company" or "Dollar General") is a leading discount retailer of quality general merchandise at everyday low prices. Through conveniently located stores, the Company offers a focused assortment of consumable basic merchandise including health and beauty aids, packaged food products, home cleaning supplies, housewares, stationery, seasonal goods, basic clothing and domestics. Dollar General stores serve primarily low-, middle- and fixed-income families.

The Company opened its first store in 1955, in which year the Company was first incorporated as a Kentucky corporation under the name J.L. Turner & Son, Inc. The Company changed its name to Dollar General Corporation in 1968, and reincorporated as a Tennessee corporation in 1998. As of February 2, 2001, the Company operated 5,000 stores located in 25 states, primarily in the southeastern and midwestern United States. As of December 14, 2001, the Company operated 5,562 stores in 27 states.

#### **Recent Developments**

**Restatement of Financial Statements.** On April 30, 2001, the Company announced that it had become aware of certain accounting issues that would cause it to restate its audited financial statements for fiscal years 1999 and 1998, and to restate the unaudited financial information for the fiscal year 2000 that had been previously released by the Company. The Audit Committee of the Board of Directors promptly assumed oversight of the Company's response to these issues and commenced an independent review to prepare the Committee for its role in reviewing the restated financial statements, assisted by the law firm of Dechert, Price and Rhoads and the independent accounting firm Arthur Andersen, LLP. The Company further announced on June 7, 2001, that its Chairman and Chief Executive Officer had directed the Company's financial staff and its outside professional consultants to review the Company's reporting, record keeping, accounting and internal control policies and practices, and that until such review had been concluded, the Company would not be in a position to update its prior financial guidance. The Company's financial staff conducted its review of these issues with the

assistance of the Company's outside counsel, Debevoise & Plimpton, and accounting consultants from KPMG LLP.

Consistent with the activities of the Audit Committee and the Company's review of its financial statements for the 1998, 1999 and 2000 fiscal years, the Company is restating by means of this filing its audited financial statements for fiscal years 1999 and 1998, and is filing herewith its audited financial results for fiscal year 2000, which restate the unaudited financial information for the fiscal year 2000 that had been previously released by the Company. The Company's previously released financial data should not be relied upon.

Restated net income and diluted earnings per share for 2000 are \$70.6 million and \$0.21, respectively, as compared to the \$206.0 million and \$0.62 previously reported. The restated results for 2000 include a pre-tax expense of \$162.0 million to settle the Company's restatement-related litigation described below. Excluding the litigation settlement expense, restated net income and diluted earnings per share for 2000 are \$169.6 million and \$0.51, respectively. Restated net income totaled \$186.7 million in fiscal 1999 and \$150.9 million in fiscal 1998, equaling diluted earnings per share of \$0.55 and \$0.45, respectively. The Company originally reported, prior to the restatement, net income of \$219.4 million in fiscal 1999 and \$182.0 million in fiscal 1998, equaling diluted earnings per share for those periods of \$0.65 and \$0.54, respectively.

In its April 30, 2001 announcement, based on a preliminary assessment of the accounting issues involved, the Company estimated that the reduction in aggregate earnings as a result of the restatement would be approximately \$0.07 per share over the three-year period of 2000, 1999 and 1998. The review completed by the Company of its financial statements ultimately identified a number of accounting issues for restatement in addition to those that formed the basis for the preliminary estimate provided on April 30, 2001. As a result of these additional issues, and following the completion of the Company's review of the issues that had been identified originally, the restatement has resulted in an aggregate effect on diluted earnings per share, excluding the litigation settlement expense, of \$0.30 over the three-year period of 2000, 1999 and 1998.

The issues for restatement, excluding the litigation settlement expense, can be broken down into four general categories: (i) items impacting the cost of goods sold that were recorded incorrectly and/or that reflect more accurate estimates, (ii) selling, general and administrative ("SG&A") expenses that were either incurred but not accrued, or recorded incorrectly, (iii) additional interest expense required as a result of restating certain operating leases as capital leases and financing obligations, and the addition of capital lease and financing obligation liabilities to the Company's balance sheets, and (iv) changes to the Company's income tax provision to correct errors. The effects of these issues on diluted earnings per share over the three-year period are summarized in the following table:

Adjustments to diluted earnings per share**:	3 Year Cumulative	Year Ended		
		February 2, 2001	January 28, 2000	January 29, 1999
Cost of goods sold	\$ (0.05)	\$ (0.01)	\$ (0.01)	\$ (0.03)
Selling, general & administrative expenses	(0.11)	(0.02)	(0.05)	(0.04)
Interest expense	(0.11)	(0.06)	(0.04)	(0.01)
Tax provision	(0.02)	(0.01)	(0.00)	(0.01)
	-----	-----	-----	-----
	\$ (0.30)	\$ (0.11)	\$ (0.10)	\$ (0.09)
	=====	=====	=====	=====

\*Totals may not foot due to rounding; excludes litigation settlement expense.

Although the issues for restatement in total had a negative aggregate impact on earnings per share over the three-year period, some of the issues resulted in an increase in diluted earnings per share, while others affected diluted earnings in individual years but had no impact on aggregate diluted earnings per share over the three-year period.

In addition to the restatement of the Company's results of operations, the correction of many of these issues also required an adjustment to the Company's previously reported balance sheets. Please refer to Note 2 to the Consolidated Financial Statements for a schedule reconciling the various restatement-related adjustments with previously released data for 2000, 1999 and 1998.

Restatement-Related Proceedings. Following the April 30, 2001, announcement discussed above, more than 20 purported class action lawsuits were filed against the Company and certain current and former officers and directors of the Company, asserting claims under the federal securities laws. These lawsuits have been consolidated into a single action pending in the United States District Court for the Middle District of Tennessee. On July 17, 2001, the court entered an order appointing the Florida State Board of Administration and the Teachers' Retirement System of Louisiana as lead plaintiffs and the law firms of Entwistle & Cappucci LLP; Milberg Weiss Bershad Hynes & Lerach LLP; and Grant & Eisenhofer, P.A. as co-lead counsel. On January 3, 2002, the lead plaintiffs filed an amended consolidated class action complaint purporting to name as plaintiffs a class of persons who held or purchased the Company's securities and related derivative securities between May 12, 1998, and September 21, 2001. Among other things, plaintiffs have alleged that the Company and certain of its current and former officers and directors made misrepresentations concerning the Company's financial results in the Company's filings with the Securities and Exchange Commission and in various press releases and other public statements. The plaintiffs seek damages with interest, costs and such other relief as the court deems proper.

The Company has reached a settlement agreement with the purported class action plaintiffs, pursuant to which the Company has agreed to pay \$140 million to such plaintiffs in settlement for their claims, and to implement certain enhancements to its corporate governance and internal control procedures. Such agreement is subject to confirmatory discovery, to the final approval of the Company's Board of Directors, and to court approval.

Following the completion of confirmatory discovery, plaintiffs have the right under the settlement agreement to amend their complaint further to increase the size of the class, and to negotiate with the Company for additional damages, the aggregate amount of all damages to be paid in settlement of plaintiffs' claims not to exceed \$162 million. The Company expects that following the completion of such confirmatory discovery, the plaintiffs will amend their complaint and seek aggregate damages of \$162 million. The Company has accordingly recognized an expense of \$162 million in the fourth quarter of 2000. The Company expects to receive from its insurers approximately \$4.5 million in respect of the class action settlement, which amount has not been accrued in the Company's financial statements.

In addition, six purported shareholder derivative lawsuits have been filed in Tennessee State Court against certain current and former Company directors and officers and Deloitte & Touche LLP, the Company's former independent accountant. The Company is named as a nominal defendant in the actions, which seek restitution and/or compensatory and punitive damages with interest, equitable and/or injunctive relief, costs and such further relief as the court deems proper. By order entered October 31, 2001, the court appointed Michael Dixon, Jr., Carolinas Electrical Workers Retirement Fund and Thomas Dewey, plaintiffs in one of the six filed cases, as lead plaintiffs and the law firms of Branstetter, Kilgore Stranch & Jennings, and Stanley, Mandel & Iola as lead counsel. In the same order, the court stayed the remaining cases pending completion of the lead case. Among other things, the plaintiffs allege that certain current and former Company directors and officers breached their fiduciary duties to the Company and that Deloitte & Touche aided and abetted those breaches and was negligent in its service as the Company's independent accountant. During August and September 2001, the Company moved to dismiss all six cases for failure to make a pre-suit demand on the Board of Directors and, in the alternative, requested that the court stay the actions pending the completion of an investigation into the allegations in the complaints by the Shareholder Derivative Claim Review Committee of the Company's Board of Directors. The lead plaintiffs filed an opposition to this motion on October 2, 2001. A hearing on the motion has not yet been scheduled.

Two purported shareholder derivative lawsuits also have been filed in the United States District Court for the Middle District of Tennessee against certain current and former Company directors and officers alleging that they breached their fiduciary duties to the Company. The Company is named as a nominal defendant in these actions, which seek declaratory relief, compensatory and punitive damages, costs and such further relief as the court deems proper. By motion filed on September 28, 2001, the Company requested that the federal court abstain from exercising jurisdiction over the purported shareholder derivative actions in deference to the pending state court actions. By agreement of the parties and court order dated December 3, 2001, the case has been stayed until June 3, 2002.



The Company and the individual defendants have reached a settlement agreement with lead counsel to the plaintiffs in the lead Tennessee state shareholder derivative action. The agreement includes a payment to the Company from a portion of the proceeds of the Company's director and officer liability insurance policies as well as certain corporate governance and internal control enhancements. Pursuant to the terms of such agreement, the Company anticipates that all of the stayed cases, including the federal derivative cases described above, will be dismissed with prejudice by the courts in which they are pending. Such agreement is subject to confirmatory discovery, to the final approval of the Company's Board of Directors, and to court approval. If the settlement agreement is approved, the Company expects that it will result in a net payment to the Company, after attorneys' fees payable to the plaintiffs' counsel, of approximately \$24.8 million, which has not been accrued in the Company's financial statements.

The Company believes that it has substantial defenses to the purported class action and the derivative lawsuits and intends to assert these defenses in the courts in which the actions are pending in the event the settlement agreements referred to above do not successfully resolve these matters. These cases are at an early stage and the amount of potential loss, if any, should the settlement agreements not become effective cannot be reasonably estimated. An unfavorable outcome for the Company in these actions could have a material adverse impact on the Company's financial position and results of operations.

The Company has been notified that the SEC is conducting an investigation into the circumstances that gave rise to the Company's April 30, 2001 announcement. The Company is cooperating with this investigation by providing documents and other information to the SEC.

### **Overall Business Strategy**

Dollar General's mission statement is "A Better Life for Everyone!" To carry out this mission, the Company has developed a business strategy that focuses on providing its customers with a focused assortment of consumable basic merchandise in a convenient, small-store format.

**Our Customers.** The Company serves the consumable basics needs of customers primarily in the low- and middle-income brackets, and customers on fixed incomes. Research performed by an outside service on behalf of the Company in the Spring of 2001 indicated that approximately 55% of its customers live in households earning less than \$30,000 a year, and approximately 36% earn less than \$20,000. The Company's merchandising and operating strategies are designed to meet the consumable basics needs of the consumers in this group.

**Our Stores.** The average Dollar General store has approximately 6,700 selling square feet and serves customers whose homes are usually located within three to five miles of the store. Most stores are in small towns with populations of fewer than 20,000. The Company believes that its target customers prefer the convenience of a small, neighborhood store. As the discount store industry continues to move toward larger, "super-center" type stores, which are often built outside of towns, the Company believes that Dollar General's convenient discount store format will continue to attract customers and provide the Company with a competitive advantage.

**Our Merchandise.** The Company is committed to offering a focused assortment of quality, consumable basic merchandise in a number of core categories, such as health and beauty aids, packaged food products, home cleaning supplies, housewares, stationery, seasonal goods, basic apparel and domestics. Because the Company offers a focused assortment of consumable basic merchandise, customers are able to shop at Dollar General stores for their everyday household needs. In 2000, the average customer transaction was \$8.27.

**Our Prices.** The Company distributes quality, consumable basic merchandise at everyday low prices. The Company's strategy of a low-cost operating structure and a focused assortment of merchandise is designed to allow the Company to offer quality merchandise at highly competitive prices. As part of this strategy, the Company emphasizes even-dollar price points. The majority of the Company's products are priced at \$10 or less, with approximately 33% of the products priced at \$1 or less. The most expensive items are generally priced around \$35.

**Our Cost Controls.** The Company places an emphasis on aggressively managing its overhead cost structure. Additionally, the Company seeks to locate stores in neighborhoods where rental and operating costs are low. The Company attempts to control operating costs by implementing new technology where feasible. Examples of this strategy in fiscal 2000 and 2001 include new IBM registers designed to capture payroll information and monitor employee productivity, new handheld store inventory ordering technology which should result in lower inventory handling and carrying costs, and the introduction of a new sales audit product which identifies register procedure violations by providing transactional information about cashier activities.

### **Growth Strategy**

The Company has experienced a rapid rate of expansion in recent years, increasing its number of stores from 2,059 as of January 31, 1995, to 5,562 as of December 14, 2001. In addition to growth from new store openings, the Company recorded same-store sales increases of 0.9%, 6.4% and 8.3% in 2000, 1999 and 1998, respectively. Management will continue to seek to grow the Company's business. The

Company believes this growth will come from a combination of new store openings, infrastructure investments and merchandising initiatives.

**New Store Growth.** Management believes that the Company's convenient, small-store format is adaptable to small towns and neighborhoods throughout the country. The Company currently serves more than 3,000 communities with populations of fewer than 20,000. The Company intends to continue to focus on small towns and neighborhoods within its existing market area where management believes the Company has the potential to expand its store base. By opening new stores in its existing market area, the Company takes advantage of brand awareness and maximizes its operating efficiencies.

In addition, the Company expects to explore the potential for expansion into new geographic markets as opportunities present themselves. Specifically, in 2001 the Company opened its first stores in New York and New Jersey. As of December 14, 2001, the Company had 49 stores in New York, and eight stores in New Jersey. Consistent with its strategy, the Company is focusing its efforts in these states on small communities.

In 2000, 1999 and 1998, the Company opened 758, 646 and 551 new stores, and remodeled or relocated 237, 409 and 351 stores, respectively. In 2001, the Company currently plans to open approximately 600 new stores, close 50 to 60 stores, and remodel or relocate approximately 70 stores.

**Infrastructure Investments.** In recent years, the Company has made significant investments in its distribution network and management information systems. In August 2000, the Company opened a 1.0 million square-foot distribution center ("DC") in Alachua, Florida, and in April 2001, the Company opened a 1.2 million square-foot DC in Zanesville, Ohio. Subsequent to the DC opening in Alachua, Florida the Company closed a DC in Homerville, Georgia. In addition, the Company closed a DC in Villa Rica, Georgia that had only served new stores. As a result of these openings and closings, the Company has seven distribution centers located throughout the southeastern and midwestern United States. Of these seven DCs, four were opened between 1998 and 2001 - Alachua, Florida; Zanesville, Ohio; Indianola, Mississippi; and Fulton, Missouri. The remaining three DCs are located in Ardmore, Oklahoma; Scottsville, Kentucky; and South Boston, Virginia. These significant investments in distribution were the result of the Company's strategy to reduce transportation expenses and effectively support the Company's growth. Each DC, on average, services 800 stores with an average distance per delivery of approximately 220 miles.

Recent investments in technology include a new merchandise planning system designed to assist our merchants with their purchasing and store allocation decisions (2001 and 2002); satellite technology that provides faster check authorization and improves communications between the stores and the corporate office (2001 and 2002); new handheld store-ordering technology to improve the accuracy of store orders (2000 and 2001); new flatbed scanners to increase checkout speed and scanning accuracy (2000); new IBM registers that capture payroll data and monitor employee productivity (2000, 2001 and 2002);

an automated distribution center replenishment system to reduce inventory safety stocks (2000); and the introduction of the Manugistics transportation management system, which optimizes truck routes and backhaul opportunities (1998 and 1999).

**Merchandising Initiatives.** The Company's merchandising initiatives are designed to promote same-store sales increases. In 2000, the Company modified its merchandise mix by discontinuing approximately 850 slow-performing items and adding approximately 600 new items. The Company also added soft drink coolers in all of its stores and continued to introduce promotional items, representing less than 5% of total net sales in 2000. The Company will continue to evaluate the performance of its merchandise mix and make changes where appropriate.

## **Merchandise**

Dollar General stores offer a focused assortment of quality, consumable basic merchandise in a number of core categories. The Company separates its merchandise into the following four divisions for internal reporting purposes: (1) highly consumable, (2) hardware and seasonal, (3) basic clothing, and (4) home products.

Since 1997, the Company has increased its emphasis on the highly consumable division by adding items in the food, paper, household chemicals, and health and beauty care categories. During the same period, the Company has reduced its emphasis on the home products division by eliminating items such as bath mats, area rugs and bath towels. In 1998, the Company introduced approximately 400 new stock-keeping units ("SKUs") of family-oriented, basic apparel including items such as jeans, khakis, T-shirts and knit shirts for men, women and children at prices of \$10 or less. As of December 14, 2001, the Company continues to carry approximately half of those SKUs, which the Company considers a part of its core apparel program.

The percentage of total sales of each of the four divisions tracked by the Company is as follows: in 2000 total sales consisted of 55.3% highly consumables, 15.5% hardware and seasonal, 12.2% basic clothing and 17.0% home products; in 1999 total sales consisted of 51.3% highly consumables, 16.5% hardware and seasonal, 12.4% basic clothing and 19.8% home products; and in 1998 total sales consisted of 42.3% highly consumables, 18.8% hardware and seasonal, 12.2% basic clothing and 26.7% home products. Of the four divisions, the hardware and seasonal division typically records the highest gross profit rate and the highly consumables division typically records the lowest gross profit rate.

The Company purchases its merchandise from a wide variety of suppliers. No supplier accounted for more than 13% of the Company's purchases in 2000. Approximately 12% of the Company's purchases in 2000 were imported.

The Company does not run weekly advertising circulars but does advertise to support new store openings. Advertising expenses are less than 1% of sales.

The Company maintains approximately 3,500 core SKUs per store. The Company's average customer purchase in 2000 was \$8.27. The average number of items in each customer purchase was 5.8, and the average price of each purchased item was \$1.42.

As indicated in Note 4 to the Consolidated Financial Statements, the Company believes that it has certain excess inventory that will require a markdown to assist with its disposition. Accordingly, the Company recorded a markdown which had the impact of reducing inventory at cost at February 2, 2001, and increasing cost of goods sold in the fourth quarter of 2000 by approximately \$21.5 million. The Company believes that this markdown will be adequate to ensure the sale of the excess inventory during fiscal years 2001 and 2002. However, there can be no assurance that the Company will be able to sell all of this inventory by the end of 2002 without a further markdown. The Company moved \$116.0 million of inventory out of current assets at February 2, 2001, that it does not expect to sell during 2001.

The Company's business is modestly seasonal in nature. The only extended seasonal increase in business that the Company experiences is the Christmas selling season. During the Christmas selling season, the Company carries merchandise that it does not carry during the rest of the year such as gift sets, trim-a-tree, certain baking items, and a broader assortment of toys and candy. In 2000, 1999 and 1998 the fourth quarter generated 32%, 30% and 31% of the Company's total annual revenues, respectively. Although all four of the Company's divisions experienced their highest sales in the fourth quarter, the hardware and seasonal division had the largest increases.

### **The Dollar General Store**

The typical Dollar General store has approximately 6,700 square feet of selling space and is operated by a manager, an assistant manager and two or more sales clerks. Most stores are in small towns with populations of fewer than 20,000. As of December 14, 2001, approximately 58% of stores were located in strip shopping centers, 38% were freestanding buildings and less than 4% were in downtown store buildings. The Company generally has not encountered difficulty locating suitable store sites in the past, and management does not currently anticipate experiencing material difficulty in finding suitable locations at favorable rents.

The Company's recent store growth is summarized in the following table:

Year	Stores at Beginning of Year	Stores Opened	Stores Closed	Net Store Increase	Stores at Year End
1998	3,169	551	33	518	3,687
1999	3,687	646	39	607	4,294
2000	4,294	758	52	706	5,000

In 2001, the Company currently plans to open approximately 600 new stores, close 50 to 60 stores, and remodel or relocate approximately 70 stores. As of December 14, 2001, the Company operated 5,562 retail stores.

### Employees

As of February 2, 2001, the Company and its subsidiaries employed approximately 39,500 full-time and part-time employees, including divisional and regional managers, area managers, store managers, and DC and administrative personnel, compared with approximately 34,600 employees on January 28, 2000. The Company had approximately 45,000 employees, excluding temporary Christmas help, as of December 14, 2001. Management believes the Company's relationship with its employees is good.

### Competition

The Company is engaged in a highly competitive business. The Company competes with discount stores and with many other retailers, including mass merchandise, grocery, drug, convenience, variety and other specialty stores. Some of the nation's largest retail companies operate stores in areas where the Company operates. The Company's direct competitors in the dollar store retail categories include Family Dollar, Dollar Tree, Fred's and various local, independent operators. Competitors from other retail categories include CVS, Rite Aid, Walgreens, Eckerds, Wal-Mart and Kmart. Some of the Company's competitors from outside the dollar store segment are better capitalized than the Company.

The dollar store category differentiates itself from other forms of retailing by offering consistently low prices in a convenient, small-store format. Recently conducted independent research indicates that the average dollar store customer visits a store approximately 90 times each year. The Company's prices are competitive because of its low cost operating structure and the relatively limited assortment of products offered. Labor and marketing expenses are minimized by not using circulars, limiting price points and relying on simple merchandise presentation. Occupancy expenses are typically low because the Company attempts to locate in second tier locations, either in small towns or in the neighborhoods of more urban areas where such expenses are low.

The Company believes that its limited assortment of products allows it to focus its purchasing efforts on fewer SKUs than other retailers, which helps keep the cost of goods low.

## ITEM 2. PROPERTIES

As of February 2, 2001, the Company operated 5,000 retail stores located in 25 states. As of December 14, 2001, the Company operated 5,562 retail stores located in 27 states, as follows:

State	Number of Stores	State	Number of Stores
Alabama	264	Missouri	256
Arkansas	192	Nebraska	60
Delaware	19	New Jersey	8
Florida	320	New York	49
Georgia	308	North Carolina	286
Illinois	239	Ohio	302
Indiana	240	Oklahoma	224
Iowa	125	Pennsylvania	284
Kansas	140	South Carolina	202
Kentucky	236	Tennessee	312
Louisiana	193	Texas	715
Maryland	56	Virginia	216
Michigan	54	West Virginia	110
Mississippi	152		

Substantially, all of the Company's stores are located in leased premises. Individual store leases vary as to their terms, rental provisions and expiration dates. In 2000, the Company's aggregate store rental expense averaged \$4.77 per square foot of selling space. The Company's policy is to negotiate low-cost, short-term leases (usually with initial or primary terms of three to five years) with multiple renewal options when available.

The Company's DCs serve Dollar General stores as described in the following table:

Location	Year Opened	As of December 14, 2001	
		Approximate Square Footage	Approximate Number of Stores Served
Scottsville, Kentucky	1959	720,000	814
Ardmore, Oklahoma	1994	1,200,000	972
South Boston, Virginia	1997	1,210,000	915
Indianola, Mississippi	1998	820,000	618
Fulton, Missouri	1999	1,150,000	793
Alachua, Florida	2000	980,000	714
Zanesville, Ohio	2001	1,170,000	736

The Company owns the DC located in Scottsville, Kentucky and leases all of its other DCs. The Company opened its Zanesville, Ohio DC in April of 2001. The Company's executive offices are located in approximately 302,000 square feet of leased space in Goodlettsville, Tennessee.

### **ITEM 3. LEGAL PROCEEDINGS**

#### **Restatement-Related Proceedings**

Following the April 30, 2001, announcement discussed above, more than 20 purported class action lawsuits were filed against the Company and certain current and former officers and directors of the Company, asserting claims under the federal securities laws. These lawsuits have been consolidated into a single action pending in the United States District Court for the Middle District of Tennessee. On July 17, 2001, the court entered an order appointing the Florida State Board of Administration and the Teachers' Retirement System of Louisiana as lead plaintiffs and the law firms of Entwistle & Cappucci LLP, Milberg Weiss Bershad Hynes & Lerach LLP and Grant & Eisenhofer, P.A. as co-lead counsel. On January 3, 2002, the lead plaintiffs filed an amended consolidated class action complaint purporting to name as plaintiffs a class of persons who held or purchased the Company's securities and related derivative securities between May 12, 1998, and September 21, 2001. Among other things, plaintiffs have alleged that the Company and certain of its current and former officers and directors made misrepresentations concerning the Company's financial results in the Company's filings with the Securities and Exchange Commission and in various press releases and other public statements. The plaintiffs seek damages with interest, costs and such other relief as the court deems proper.

The Company has reached a settlement agreement with the purported class action plaintiffs, pursuant to which the Company has agreed to pay \$140 million to such plaintiffs in settlement for their claims, and to implement certain enhancements to its corporate governance and internal control procedures. Such agreement is subject to confirmatory discovery, to the final approval of the Company's Board of Directors, and to court approval. Following the completion of confirmatory discovery, plaintiffs have the right under the settlement agreement to amend their complaint further to increase the size of the class, and to negotiate with the Company for additional damages, the aggregate amount of all damages to be paid in settlement of plaintiffs' claims not to exceed \$162 million. The Company expects that following the completion of such confirmatory discovery, the plaintiffs will amend their complaint and seek aggregate damages of \$162 million. The Company has accordingly recognized an expense of \$162 million in the fourth quarter of 2000. The Company expects to receive from its insurers approximately \$4.5 million in respect of the class action settlement, which amount has not been accrued in the Company's financial statements.



In addition, six purported shareholder derivative lawsuits have been filed in Tennessee State Court against certain current and former Company directors and officers and Deloitte & Touche LLP, the Company's former independent accountant. The Company is named as a nominal defendant in the actions, which seek restitution and/or compensatory and punitive damages with interest, equitable and/or injunctive relief, costs and such further relief as the court deems proper. By order entered October 31, 2001, the court appointed Michael Dixon, Jr., Carolinas Electrical Workers Retirement Fund and Thomas Dewey, plaintiffs in one of the six filed cases, as lead plaintiffs and the law firms of Branstetter, Kilgore Stranch & Jennings and Stanley, Mandel & Iola as lead counsel. In the same order, the court stayed the remaining cases pending completion of the lead case. Among other things, the plaintiffs allege that certain current and former Company directors and officers breached their fiduciary duties to the Company and that Deloitte & Touche aided and abetted those breaches and was negligent in its service as the Company's independent accountant. During August and September 2001, the Company moved to dismiss all six cases for failure to make a pre-suit demand on the Board of Directors and, in the alternative, requested that the court stay the actions pending the completion of an investigation into the allegations in the complaints by the Shareholder Derivative Claim Review Committee of the Company's Board of Directors. The lead plaintiffs filed an opposition to this motion on October 2, 2001. A hearing on the motion has not yet been scheduled.

Two purported shareholder derivative lawsuits also have been filed in the United States District Court for the Middle District of Tennessee against certain current and former Company directors and officers alleging that they breached their fiduciary duties to the Company. The Company is named as a nominal defendant in these actions, which seek declaratory relief, compensatory and punitive damages, costs and such further relief as the court deems proper. By motion filed on September 28, 2001, the Company requested that the federal court abstain from exercising jurisdiction over the purported shareholder derivative actions in deference to the pending state court actions. By agreement of the parties and court order dated December 3, 2001, the case has been stayed until June 3, 2002.

The Company and the individual defendants have reached a settlement agreement with lead counsel to the plaintiffs in the lead Tennessee state shareholder derivative action. The agreement includes a payment to the Company from a portion of the proceeds of the Company's director and officer liability insurance policies as well as certain corporate governance and internal control enhancements. Pursuant to the terms of such agreement, the Company anticipates that all of the stayed cases, including the federal derivative cases described above, will be dismissed with prejudice by the courts in which they are pending. Such agreement is subject to confirmatory discovery, to the final approval of the Company's Board of Directors, and to court approval. If the settlement agreement is approved, the Company expects that it will result in a net payment to the Company, after

attorneys' fees payable to the plaintiffs' counsel, of approximately \$24.8 million, which has not been accrued in the Company's financial statements.

The Company believes that it has substantial defenses to the purported class action and the derivative lawsuits and intends to assert these defenses in the courts in which the actions are pending in the event the settlement agreements referred to above do not successfully resolve these matters. These cases are at an early stage and the amount of potential loss, if any, should the settlement agreements not become effective cannot be reasonably estimated. An unfavorable outcome for the Company in these actions could have a material adverse impact on the Company's financial position and results of operations.

The Company has been notified that the SEC is conducting an investigation into the circumstances that gave rise to the Company's April 30, 2001, announcement. The Company is cooperating with this investigation by providing documents and other information to the SEC.

#### **Other Litigation**

The Company was involved in other litigation, investigations of a routine nature and various legal matters during 2000, which were and are being defended and otherwise handled in the ordinary course of business. While the ultimate results of these matters cannot be determined or predicted, management believes that they have not had and will not have a material adverse effect on the Company's results of operations or financial position.

#### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

No matters were submitted to shareholders during the quarter ended February 2, 2001, or during the first three quarters of fiscal year 2001.

## PART II

### ITEM 5. MARKET FOR THE REGISTRANT'S COMMON STOCK AND RELATED SECURITY

#### HOLDER MATTERS

The Company's common stock is traded on the New York Stock Exchange under the symbol "DG." The following table sets forth the range of the high and low closing prices of the Company's common stock during each quarter in 2000 and 1999, as reported on the New York Stock Exchange, together with dividends. All numbers have been restated to reflect common stock splits.

2000	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
High	\$ 21.80	\$ 21.44	\$ 23.06	\$ 19.81
Low	\$ 14.65	\$ 16.31	\$ 14.75	\$ 13.50
Dividends	\$ .026	\$ .032	\$ .032	\$ .032
1999	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
High	\$ 23.68	\$ 24.65	\$ 25.80	\$ 21.70
Low	\$ 15.84	\$ 21.20	\$ 18.60	\$ 16.65
Dividends	\$ .021	\$ .026	\$ .026	\$ .026

The Company's stock price at the close of the market on December 14, 2001, was \$13.90.

There were approximately 12,400 shareholders of record of the Company's common stock as of December 14, 2001. The Company has paid cash dividends on its common stock since 1975. The Board of Directors regularly reviews the Company's dividend plans to ensure that they are consistent with the Company's earnings performance, financial condition, need for capital and other relevant factors. The Company did not sell any of its equity securities during 2000 without registration under the Securities Act of 1933, as amended.

**ITEM 6. SELECTED FINANCIAL DATA\***

(In thousands except per share and operating data, as restated)

	February 2, 2001 (53-week year)	January 28, 2000	January 29, 1999
<b>SUMMARY OF OPERATIONS:</b>			
Net sales	\$ 4,550,571	\$ 3,887,964	\$ 3,220,989
Gross profit	\$ 1,250,903	\$ 1,093,498	\$ 892,519
Litigation settlement expense	\$ 162,000		
Income before income taxes	\$ 108,647	\$ 294,697	\$ 239,009
Net income	\$ 70,642	\$ 186,673	\$ 150,934
Net income as a % of sales	1.6%	4.8%	4.7%
<b>PER SHARE RESULTS:</b>			
Diluted earnings per share (a)	\$ 0.21	\$ 0.55	\$ 0.45
Basic earnings per share (a)	\$ 0.21	\$ 0.61	\$ 0.53
Cash dividends per share of common stock (a)	\$ 0.12	\$ 0.10	\$ 0.08
Weighted average diluted shares (a)	333,858	337,904	335,763
<b>FINANCIAL POSITION:</b>			
Assets	\$ 2,282,462	\$ 1,923,628	\$ 1,376,012
Long-term obligations	\$ 720,764	\$ 514,362	\$ 221,694
Shareholders' equity	\$ 861,763	\$ 845,353	\$ 674,406
Return on average assets	3.4%	11.3%	12.9%
Return on average equity	8.3%	24.6%	24.4%
<b>OPERATING DATA:</b>			
Retail stores at end of period	5,000	4,294	3,687
Year-end selling square feet	33,871,000	28,655,000	23,719,000
Highly consumable sales	55%	51%	42%
Hardware and seasonal sales	16%	17%	19%
Basic clothing sales	12%	12%	12%
Home products sales	17%	20%	27%

(a) As adjusted to give retroactive effect to all common stock splits.

\* The Company has determined, in light of the substantial time, effort and expense required since April of 2001 to prepare and audit its restated financial statements for fiscal 2000, 1999 and 1998, that unreasonable further effort and expense would be required to conduct a similar process to restate its previously released financial data for fiscal 1997 and 1996. Such financial data have not been restated and should not be relied upon. For a further discussion of the Company's restatement of its financial statements, see Note 2 to the Consolidated Financial Statements.

## **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

### **General**

Accounting Periods. The following text contains references to years 2001, 2000, 1999 and 1998, which represent fiscal years ending or ended February 1, 2002, February 2, 2001, January 28, 2000 and January 29, 1999, respectively. There were 53 weeks in the fiscal year ended February 2, 2001. There were 52 weeks in the fiscal years ended January 28, 2000 and January 29, 1999. There will be 52 weeks in the fiscal year ended February 1, 2002. This discussion and analysis should be read with, and is qualified in its entirety by, the consolidated financial statements and the notes thereto.

Overview of 2000. During 2000, Dollar General increased its net sales by 17.0%, primarily as a result of its continued rapid pace of new store openings. From 1998 through 2000, the Company had a compound annual net sales growth rate of 18.9%. Same-store sales increased 0.9% in 2000, as compared with increases of 6.4% and 8.3% in 1999 and 1998, respectively.

As discussed further below, management believes that the Company's operating performance in 2000 was negatively impacted by out-of-stock conditions resulting from an extensive system-wide store retrofit program and changes in the store merchandise ordering process. In addition, the Company's performance may have been impacted by changes in general economic conditions.

The year 2000 marked the thirteenth consecutive year that the Company increased its total number of store units. The Company opened 758 new stores in 2000, compared with 646 in 1999 and 551 in 1998, and remodeled or relocated 237 stores, compared with 409 in 1999 and 351 in 1998. During the last three years, the Company has opened, remodeled or relocated 2,952 stores, accounting for approximately 60% of the total stores as of February 2, 2001. The Company ended fiscal 2000 with 5,000 stores. The Company currently plans to open approximately 600 new stores and close 50 to 60 stores in 2001, and to remodel or relocate approximately 70 stores. The Company will continue to focus on opening new stores in towns with populations of 20,000 or fewer and within 250 miles of its DCs. The Company expects its new stores to be subject to operating lease arrangements. Capital expenditures related to new store openings will be financed through a combination of operating cash flow and credit facilities.

In 2000, new stores, remodels and relocations, net of 52 closed stores, added an aggregate of approximately 5 million selling square feet to the Company's total sales space. As a result, the Company had an aggregate of approximately 34 million selling square feet at the end of the year. The average new store opened in 2000 had approximately 6,900 selling square feet compared to

approximately 7,200 selling square feet for new stores opened in 1999.

In 1998, the Company introduced a preferred development program to support continued new store growth. This program enabled the Company to partner with development firms to build stores in markets where existing, acceptable retail space was not available. The Company opened 163 new stores through this program in 2000, compared with 141 new stores in 1999 and 52 new stores in 1998. In 2001, as the Company expands into new markets, management expects to meet store growth needs primarily through conventional leases.

In the third quarter of 2000, the Company opened a new DC with dual sortation capacity in Alachua, Florida and closed a DC in Homerville, Georgia. The Company also closed a DC in Villa Rica, Georgia that had been dedicated to supplying new stores and prepared the existing DCs to support new store growth in 2001. In 2000, the Company implemented a new inventory management system and focused on improving inventory processes in all DCs. This allowed the Company to increase its DC inventory turns from 11 in 1999 to 14 in 2000, a 27% increase. Continuing to support the growing store base and in an effort to improve distribution efficiencies, the Company opened its seventh DC in Zanesville, Ohio in April of 2001.

Store investment and infrastructure upgrades were priorities in 2000. New flatbed scanners were installed in all stores, and new IBM registers and checkouts were installed in approximately 2,600 stores. By the end of 2001, management expects to have the systems to support perpetual inventories in approximately 4,800 stores and expects to establish perpetual inventories in approximately 500 stores. Management expects to have the systems to support perpetual inventories in all stores by the end of 2002. A perpetual inventory allows the Company to track store level inventory at the SKU level, which should result in better inventory management. Additionally, management expects to enhance store communications and improve customer service by installing satellite communications technology in 2,500 stores in 2001, and in all stores by the end of 2002.

### **Restatement of Financial Statements**

On April 30, 2001, the Company announced that it had become aware of certain accounting issues that would cause it to restate its audited financial statements for fiscal years 1999 and 1998, and to restate the unaudited financial information for the fiscal year 2000 that had been previously released by the Company. The Audit Committee of the Board of Directors promptly assumed oversight of the Company's response to the accounting issues and commenced an independent review of these accounting issues to prepare the Committee for its role in reviewing the restated financial statements, assisted by the law firm of Dechert, Price and Rhoads and the independent accounting firm Arthur Andersen, LLP. The Company further announced on June 7, 2001, that its Chairman and Chief Executive Officer had directed the Company's

financial staff and its outside professional consultants to review the Company's reporting, record keeping, accounting and internal control policies and practices, and that until such review had been concluded, the Company would not be in a position to update its prior financial guidance. The Company's financial staff conducted its review of these issues with the assistance of the Company's outside counsel, Debevoise & Plimpton, and accounting consultants from KPMG LLP.

Consistent with the activities of the Audit Committee and the Company's review of its financial statements for the 1998, 1999 and 2000 fiscal years, the Company is restating by means of this filing its audited financial statements for fiscal years 1999 and 1998, and is filing herewith its audited financial results for fiscal year 2000, which restate the unaudited financial information for the fiscal year 2000 that had been previously released by the Company. The Company's previously released financial data should not be relied upon.

Restated net income and diluted earnings per share for 2000 are \$70.6 million and \$0.21, respectively, as compared to the \$206.0 million and \$0.62 previously reported. The restated results for 2000 include a pre-tax expense of \$162.0 million to settle the Company's restatement-related litigation described below. Excluding the litigation settlement expense, restated net income and diluted earnings per share for 2000 are \$169.6 million and \$0.51, respectively. Restated net income totaled \$186.7 million in fiscal 1999 and \$150.9 million in fiscal 1998, equaling diluted earnings per share of \$0.55 and \$0.45, respectively. The Company originally reported, prior to the restatement, net income of \$219.4 million in fiscal 1999 and \$182.0 million in fiscal 1998, equaling diluted earnings per share for those periods of \$0.65 and \$0.54, respectively.

The issues for restatement, excluding the litigation settlement expense, can be broken down into four general categories: (i) items impacting the cost of goods sold that were recorded incorrectly and/or that reflect more accurate estimates, (ii) selling, general and administrative ("SG&A") expenses that were either incurred but not accrued, or recorded incorrectly, (iii) additional interest expense required as a result of restating certain operating leases as capital leases and financing obligations, and the addition of capital lease and financing obligation liabilities to the Company's balance sheets, and (iv) changes to the Company's income tax provision to correct errors.

Set forth below is a more detailed description of the four general categories of issues identified and corrected and the earnings per share impact of such items over the three-year period of 2000, 1999 and 1998:

**Cost of Goods Sold.** The Company has reduced its diluted earnings per share by \$0.05 over the three-year period to correct items impacting the cost of goods sold that were recorded incorrectly and/or that reflect more accurate estimates. Examples of items that fall into this category include the

provision for inventory shrinkage, certain expenses associated with the Company's import program, the markdown to facilitate the sale of excess inventory, certain vendor allowances for new store openings, the accounting treatment of markdowns to remove damaged merchandise from stock, and a provision for uncollectible vendor charge backs. The item with the largest impact on the restatement affecting cost of goods sold is the recalculation of the shrinkage provision, which reduced diluted earnings per share by \$0.04 over the three-year restatement period. The restatement of cost of goods sold reduced diluted earnings per share by \$0.01, \$0.01 and \$0.03 in 2000, 1999 and 1998, respectively.

**Selling, General & Administrative Expenses.** The Company has reduced its diluted earnings per share by \$0.11 over the three-year period to record correctly expenses that were either incurred but not accrued, or recorded incorrectly. Prior to this restatement, the Company recorded certain expenses when it processed payment as opposed to when the activity was actually undertaken. Expense items that fall into this category reduced diluted earnings per share by \$0.02 over the three-year period and include, among other items, property taxes, rent, supplies, trash removal, advertising costs, maintenance costs and utilities. A partial list of expenses that were recorded incorrectly includes the depreciation expense on certain older cash registers, the rent and depreciation expense associated with certain leases restated from operating lease classification to capital lease classification, certain store labor costs and supplies that were capitalized when they should have been expensed, the impairment of a closed distribution center, compensation expense related to the use of stock options for excess tax withholding, and various expenses that were charged against unrelated liability accounts as opposed to being categorized as SG&A expenses. The restatement of SG&A expenses reduced diluted earnings per share by \$0.02, \$0.05 and \$0.04 in 2000, 1999 and 1998, respectively.

**Interest Expense.** The Company has reduced its diluted earnings per share by \$0.11 over the three-year period to correctly record additional interest expense required as a result of restating certain operating leases as capital leases or as financing obligations. As part of the restatement process, the Company examined its accounting practices with regard to certain synthetic lease facilities entered into in 1997 and 1999 with respect to its use and occupancy of certain real property, including approximately 400 stores, two of the Company's distribution centers and the Company's corporate headquarters in Goodlettsville, Tennessee. The Company determined that the synthetic leases did not meet the Statement of Financial Accounting Standards ("SFAS") No. 13 requirements for operating lease treatment due primarily to the current assumption that the Company would incur a penalty, as defined in SFAS No. 98, if it did not renew the leases. Additionally, the Company identified four sale-leaseback transactions that were incorrectly classified exclusively as operating leases. Two of these transactions have now been recorded as financing obligations, while the equipment portion of the other two transactions have been accounted for as capital leases. Increases in interest expense as a result of the various lease



classification changes reduced diluted earnings per share by \$0.06, \$0.04 and \$0.01 in 2000, 1999 and 1998, respectively. As of February 2, 2001, January 28, 2000, and January 29, 1999, the Company added various long-term obligations to its consolidated balance sheets of \$511.0 million, \$513.8 million, and \$175.7 million, respectively.

**Tax Provision.** The Company has reduced its diluted earnings per share by \$0.02 over the three-year period to correct errors in the Company's tax provision. The Company's effective tax rate before the restatement was 36.2% in 2000, 36.2% in 1999, and 35.2% in 1998. The Company's effective tax rate on a restated basis, excluding the impact of the litigation settlement expense, is 37.3% in 2000, 36.7% in 1999 and 36.9% in 1998. Issues contributing to the increase in the effective tax rate include a change in the calculation of the Company's deferred tax liability from a consolidated calculation to a calculation by individual entity in accordance with SFAS No. 109; a change in the computation of the income tax benefit allocated to additional paid-in capital related to the exercise of non-qualified stock options; the correction of a duplicate deduction related to inventory on a prior income tax return; the correction of the Company's current income tax liability which had been improperly reduced for amounts paid relating to professional fees, interest and certain penalties; and increases to income tax-related accrued liabilities. The restatement of the Company's income tax provision reduced diluted earnings per share, excluding the impact of the litigation settlement expense, by \$0.01 in 2000 and \$0.01 in 1998. A tax rate of 38.9% was applied in 2000 against the \$162.0 million litigation settlement expense. Including the impact of the litigation settlement expense, the restated effective tax rate in 2000 was 35.0%.

In addition to the restatement of diluted earnings per share, the correction of many of these issues also required an adjustment to previously reported balance sheets. Please refer to Note 2 to the Consolidated Financial Statements for a schedule reconciling the various restatement-related adjustments with previously released data for 2000, 1999 and 1998.

### **Critical Accounting Policies**

As discussed in Note 1 to the Consolidated Financial Statements, inventories are stated at the lower of cost or market with cost determined using the retail last-in, first-out ("LIFO") method. Under the retail inventory method ("RIM"), the valuation of inventories at cost and the resulting gross margins are calculated by applying a calculated cost-to-retail ratio to the retail value of inventories. RIM is an averaging method that has been widely used in the retail industry due to its practicality. Also, it is recognized that the use of the retail inventory method will result in valuing inventories at lower of cost or market if markdowns are currently taken as a reduction of the retail value of inventories.

Inherent in the RIM calculation are certain significant management judgments and estimates including, among others, merchandise markon, markups, markdowns and shrinkage, which significantly impact the ending inventory valuation at cost as well as resulting gross margins. These significant estimates, coupled with the fact that the RIM is an averaging process, can, under certain circumstances, produce distorted or inaccurate cost figures. Factors that can lead to distortion in the calculation of the inventory balance include applying the RIM to a group of products that is not fairly uniform in terms of its cost and selling price relationship and turnover, and applying RIM to transactions over a period of time that includes different rates of gross profit, such as those relating to seasonal merchandise. To reduce the potential of such distortions in the valuation of inventory from occurring, the Company's RIM utilizes 10 departments in which fairly homogenous classes of merchandise inventories having similar gross margins are grouped. In addition, failure to take markdowns currently can result in an overstatement of cost under the lower of cost or market principle. During fiscal 2000, the Company recorded markdowns that had not been taken and which served to reduce inventories to lower of cost or market by approximately \$21.5 million.

Management believes that the Company's RIM provides an inventory valuation which reasonably approximates cost and results in carrying inventory at the lower of cost or market.

## **Results of Operations**

The following discussion of the Company's financial performance is based on the Consolidated Financial Statements set forth herein.

**Net Sales.** Net sales totaled \$4.55 billion for 2000, \$3.89 billion for 1999 and \$3.22 billion for 1998, representing annual increases of 17.0% in 2000, 20.7% in 1999 and 22.6% in 1998. The increases resulted primarily from 706 net new stores and a same-store sales increase of 0.9% in 2000; 607 net new stores and a same-store sales increase of 6.4% in 1999; and 518 net new stores and a same-store sales increase of 8.3% in 1998.

The Company believes that the lower same store sales increase in 2000 was due primarily to the disruptive effect of a comprehensive store reset program designed to improve the product mix and appearance of its stores, which affected the vast majority of the store base. This program, which commenced in May and concluded in August of 2000, involved adding items in faster turning categories such as food, paper products and health and beauty aids, and reducing the number of SKUs in the apparel and home products categories. In addition to these changes in the product mix, the reset involved moving center island fixtures and relocating within the store much of the existing inventory. The reset program also included widening store aisles in an effort to make the shopping experience more convenient for customers. The Company believes this

program will ultimately lead to an improvement in sales per square foot. The implementation of the reset program, however, strained store labor resources and disrupted operations during the affected period. This disruption resulted in sporadic out-of-stock conditions, mostly in ancillary items such as mops and brooms, pet supplies, trash bags and domestics, from May 2000 through December 2000.

Other factors that may have had an impact on the lower same store sales increase in 2000 include a change in store ordering procedures from a manual process to a new automated system relying on the scanning of shelf tags, which may have been an additional cause of the sporadic out-of-stock conditions experienced by the Company, and a general softening of economic conditions.

The relatively strong same store sales increases in 1999 and 1998 were due primarily to the Company's ongoing shift in emphasis to the consumable basics segment of its business.

The Company tracks its sales internally by four divisions: highly consumable, hardware and seasonal, basic clothing and home products. Total sales in the highly consumable department increased by 26.1%, 46.4% and 23.9% in 2000, 1999 and 1998, respectively. Total sales in the hardware and seasonal department increased by 10.2%, 6.0%, and 21.1% in 2000, 1999 and 1998, respectively. Total sales in the basic clothing department increased by 14.9%, 23.2% and 26.3% in 2000, 1999 and 1998, respectively. Total sales in the home products department experienced annual changes of 0.5%, (10.7)% and 20.0% in 2000, 1999 and 1998, respectively.

**Gross Profit.** Gross profit for 2000 was \$1.25 billion, or 27.5% of sales, compared with \$1.09 billion, or 28.1% of sales in 1999 and \$0.89 billion, or 27.7% of sales, in 1998. The decline in the gross profit rate in 2000 as compared to 1999 was due primarily to the \$21.5 million effect of a markdown recorded in 2000. As described in Note 4 to the Consolidated Financial Statements (see Item 8), the Company believes that it has certain excess inventories that will require a markdown to assist with its disposition. The Company believes that this markdown will be adequate to ensure the sale of the excess inventory during fiscal years 2001 and 2002. However, there can be no assurance that the Company will be able to sell all of this inventory by the end of 2002 without marking down the inventory at issue in amounts exceeding the markdown recorded to date.

The increase in the gross profit rate in 1999 as compared to 1998 is due primarily to a 62 basis point increase in the initial margin recognized on inventory purchases resulting, in part, from an increase in 1999 in the purchase of higher margin private label items and "price" brands, and a reduction in 1999 in the purchase of lower margin basic clothing items.

Inventory shrinkage calculated at the retail value of the inventory, as a percentage of sales, was 2.80% in 2000, 2.62% in 1999 and 2.59% in 1998. The Company's goal is to maintain a shrink rate in the range of 1.75% to 2.00%. In 2001 the Company appointed approximately 25 financial control specialists to assist its stores with various shrinkage reduction efforts. These financial control specialists are focusing on activities such as investigating missing cash deposits and evaluating the processes in stores with consistently poor shrinkage results.

Distribution and transportation costs increased by 16 basis points as a percentage of sales in 2000 as compared to 1999, and increased by 5 basis points in 1999 as compared to 1998. The increase in distribution and transportation costs as a percentage of sales is due in part to the additional fixed costs associated with the Fulton and Alachua distribution centers, which were opened in 1999 and 2000, respectively.

Selling, General and Administrative Expense. Total SG&A expense as a percentage of net sales was 20.5% in 2000, compared with 19.9% in 1999 and 19.9% in 1998. SG&A expense for 2000 was \$934.9 million, an increase of 21.0% compared to 1999. SG&A expense in 1999 was \$772.9 million, an increase of 20.9% over the 1998 total of \$639.5 million.

The 66 basis point increase in SG&A expense as a percentage of net sales experienced in 2000 was due in part to the fact that store labor, store depreciation and amortization, and store utilities experienced annual increases of 22.9%, 44.4% and 27.8%, respectively, which were all in excess of the Company's sales increase of 17.0%. The increase in store labor as a percentage of sales was due principally to the additional hours required to complete the store reset program and the general weakness of same store sales. The increase in store depreciation and amortization expense as a percentage of sales was a result of the number of new stores subject to capital leases.

Litigation Settlement Expense. The Company recorded \$162.0 million in 2000 for the proposed settlement of the restatement-related litigation. See Note 2 to the Consolidated Financial Statements.

Interest Expense. In 2000, interest expense was \$45.4 million compared with \$25.9 million in 1999 and \$14.0 million in 1998. The increase in interest expense in 2000 resulted from the net addition of \$213.6 million in various long-term obligations during 2000.

The average daily total debt outstanding in 2000 was \$710.3 million at an average interest rate of 7.2%. The increase in interest expense in 1999 resulted from the addition in 1999 of \$293.8 million in various long-term obligations. The average daily total debt outstanding in 1999 was \$454.0 million at an average interest rate of 6.0%. The average total debt outstanding in 1998 was \$253.8 million at an average interest rate of 5.8%.

Provision for Taxes on Income. The effective income tax rates for 2000, 1999 and 1998 were 35.0%, 36.7% and 36.9%, respectively. The reduction in the effective tax rate in 2000 was due to the 38.9% marginal tax rate applied against the litigation settlement expense. Excluding the tax impact of the litigation settlement expense, the effective tax rate in 2000 was 37.3%.

## **Liquidity and Capital Resources**

Capital Structure. The Company has accessed capital through public debt, bank financings, long-term leases and financing obligations. In 2000, the Company financed its short-term working capital needs through borrowings under the Company's \$175 million revolving credit facility and seasonal bank lines of credit totaling \$80 million at February 2, 2001. The revolving credit facility has two financial covenants, a fixed charge test and a leverage test. The leverage test was amended in 2000 to provide the Company with increased operating flexibility. As of December 14, 2001, the revolving credit facility was priced at LIBOR plus 102.5 basis points. As of February 2, 2001 the Company had no revolving or seasonal loans outstanding and was in compliance with the financial covenants under the revolving credit facility. As of December 14, 2001, the Company has not renewed its seasonal lines of credit. Until the restatement-related legal proceedings referred to previously and in Note 9 to the Consolidated Financial Statements are resolved, the Company may need waivers in order to draw on the revolving credit facility. The Company's total debt as of February 2, 2001, was \$729.8 million, compared with \$516.2 million as of January 28, 2000, and \$222.4 million as of January 29, 1999.

In June 2000, the Company issued \$200 million of 8 5/8% notes to repay outstanding short-term borrowings and for general corporate purposes. The notes are unsecured and guaranteed by all of the Company's subsidiaries. The notes have certain restrictive covenants, including limitations on secured indebtedness and certain sale and leaseback transactions.

As of February 2, 2001, the Company had \$383 million outstanding under two synthetic lease facilities (the "Facilities") maturing in September 2002, one with \$212 million in outstanding capital leases and the other with \$171 million in outstanding capital leases. The leases allow for the use and occupancy of certain real property, including approximately 400 retail stores, two distribution centers and the Company's headquarters in Goodlettsville, Tennessee. The Company plans to purchase the properties from the lessor at the maturity of the Facilities. The Company is currently working on a plan to refinance the lease obligations. The Facilities have the same two financial covenants as the revolving credit facility, a fixed charge test and a leverage test. The facility with \$212 million in outstanding capital leases is funded by a syndicate of financial institutions; borrowings under the facility were priced at LIBOR plus 102.5 basis points as of December 14, 2001. The pricing spread over LIBOR fluctuates based on the Company's debt ratings as published by the

debt rating agencies. The Company's spread over LIBOR increased to 102.5 basis points from 15 basis points as part of the October 19, 2001, waiver and amendment as described below. The facility with \$171 million in outstanding capital leases is funded by commercial paper issued at prevailing market rates by a commercial paper funding entity and is secured by a letter of credit facility.

In June 2000, distribution centers in Indianola, Mississippi and Fulton, Missouri were purchased from the Facilities and sold in sale-leaseback transactions resulting in twenty-two year, triple net leases with renewal options for an additional thirty years. These were refinanced to bolster liquidity and diversify sources of funds.

Throughout 2001, the Company obtained waivers from its lenders to, among other things, extend the requirement to deliver its audited 2000 financial statements, and unaudited 2001 quarterly financial statements, as a result of delays related to the restatement described herein. The Company executed waivers with its lenders under the Facilities and revolving credit facility on May 10, 2001, June 8, 2001, and July 27, 2001, a waiver and amendment on October 19, 2001, and waivers on December 28, 2001, and January 10, 2002. The June 8, 2001, waiver prohibited the Company from repurchasing its shares and limited its capital expenditures to \$160 million for the period commencing on February 2, 2001, and concluding with the delivery of the restated financial statements. The October 19, 2001, amendment increased the pricing on the synthetic lease with \$212 million in outstanding capital leases and the revolving credit facility from 15 basis points over LIBOR to 102.5 basis points over LIBOR, and accelerated the maturity of the second synthetic lease to September 2002 from June 2004. The Company executed waivers with the lenders under the Indianola, Mississippi and Fulton, Missouri distribution center leases on May 7, 2001, May 11, 2001, June 8, 2001, July 30, 2001, October 31, 2001, December 31, 2001, and January 10, 2002. In addition, the Company executed waivers with the lenders under the Ardmore and South Boston distribution center leases on January 10, 2002, and the lender under the Company's airplane lease on December 21, 2001, and January 7, 2002. The Company paid a total of approximately \$1.6 million in fees for all of the waivers and amendments.

The Company has entered into a settlement agreement with the lead plaintiffs in the restatement-related class action lawsuits brought against the Company and its officers and directors. See Item 3 (Restatement-Related Proceedings), above. Such agreement, which is subject to confirmatory discovery, court approval and the consent of the Company's insurers, will require a disbursement by the Company, most likely in the second half of the 2002 fiscal year, of up to \$162 million. The Company expects to fund such amounts out of operating cash flow, on-hand cash balances and the proceeds of insurance relating to the settlement of the class action and derivative litigation (see Note 9 to the Consolidated Financial Statements).

**Cash Flow.** In 2000, cash provided from operations, long-term financings and funds available under the Company's credit facilities provided the resources required to support operations, capital expenditures and working

capital requirements. The Company's cash flows enabled it to repay all short-term borrowings under its credit facility prior to February 2, 2001. As of December 14, 2001, the Company has not needed to utilize its revolving credit facility and has not renewed its seasonal lines of credit. Until the restatement-related legal proceedings referred to previously and in Note 9 to the Consolidated Financial Statements are resolved, the Company may need a waiver in order to draw on the revolving credit facility.

Net cash provided by operating activities for fiscal 2000 was \$215.5 million, as compared to \$196.7 million for fiscal 1999 and \$173.7 million for fiscal 1998. Cash flow from operations for fiscal 2000 compared to fiscal 1999 increased by \$18.8 million, due principally to a reduction in the amount of cash used to purchase inventory and an increase in accrued expenses and other. Cash flow from operations increased by \$23.0 million in 1999 as compared to 1998, due principally to an increase in net income of \$35.7 million in 1999.

Net cash flows used in investing activities was \$119.0 million in 2000 versus \$139.0 million in 1999 and \$143.2 million in 1998. Capital expenditures for 2000 totaled \$216.6 million, compared with \$142.1 million for 1999 and \$143.4 million for 1998. The Company opened 758 new stores and relocated or remodeled 237 stores at a cost of \$112.7 million in 2000, compared with opening 646 new stores and relocating or remodeling 409 stores at a cost of \$72.7 million in 1999. The increase in 2000 in store-related capital expenditures was due principally to the construction of approximately 72 Company-owned stores. Capital expenditures for new, relocated and remodeled stores totaled \$58.0 million during 1998.

Distribution-related capital expenditures totaled \$49.3 million in 2000, resulting primarily from costs associated with the new DCs in Alachua, Florida, and Zanesville, Ohio. In 1999, distribution-related expenditures totaled \$43.2 million, resulting primarily from costs associated with the expansion of the Ardmore, Oklahoma DC and the purchase of new delivery trailers. In 1998, the Company spent \$46.3 million, resulting primarily from costs associated with the expansion of the South Boston, Virginia DC and the purchase of new delivery trailers.

Capital expenditures during 2001 are projected to be approximately \$135 million. The Company anticipates funding its 2001 capital requirements with cash flow from operations.

Net cash provided/(used) by financing activities was \$11.0 million, \$(30.6) million and \$(20.8) million in fiscal 2000, 1999 and 1998, respectively. Cash provided in fiscal 2000 from financing activities reflected the \$200 million of notes issued in June 2000, partially offset by the payment of \$42.2 million of cash dividends, the repurchase of \$63.0 million of common stock, and the repayment of \$112.3 million of long-term obligations related

primarily to two of the Company's DCs. Cash used in fiscal 1999 by financing activities reflected the repurchase of \$50.8 million of common stock and the payment of \$33.8 million of dividends, offset partially by \$38.8 million of cash proceeds from the exercise of stock options. Cash used in financing activities in 1998 reflected the repurchase of \$73.2 million of common stock, the payment of \$26.7 million of dividends and net repayments of short-term borrowings, offset partially by \$30.7 million of cash proceeds from the exercise of options and \$72.3 million of proceeds from the financing of a distribution center.

As noted above, in September 2002 the Company's synthetic leases, in the amount of \$383 million, will mature and the Company's \$175 million revolving credit facility will expire. The Company expects to refinance the synthetic lease obligations and to replace the revolving credit facility prior to such date. The Company may also have to fund during the second half of 2002 the settlement of the class action litigation in an amount of up to \$162 million, as further discussed above. The Company believes that its existing cash balances, cash flow from operations and its ongoing access to the capital markets will provide sufficient financing to meet these obligations, as well as the Company's other foreseeable liquidity and capital resource needs. However, there can be no assurance that the Company will be able to obtain financing in the amounts that it requires or that the terms of such financing will be as attractive as the terms on which the Company has obtained financing in the past. Please refer to "Forward Looking Statements / Risk Factors" for a discussion of issues that could adversely impact the Company's financial position or its ability to obtain financing.

### **Effects of Inflation and Changing Prices**

The Company believes that inflation and/or deflation had a minimal impact on its overall operations during 2000, 1999 and 1998.

### **Accounting Pronouncements**

SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," is effective for all fiscal years beginning after June 15, 2000. SFAS No. 133, as amended, establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts and for hedging activities. Under SFAS No. 133, certain contracts that were not formerly considered derivatives may now meet the definition of a derivative. The Company adopted SFAS No. 133 effective February 3, 2001. The adoption of SFAS No. 133 did not have a significant impact on the financial position, results of operations or cash flows of the Company.

In June 2001, the Financial Accounting Standards Board (the "FASB") issued SFAS No. 141, "Business Combinations," and SFAS No. 142, "Goodwill and Other Intangible Assets." Under the new rules, goodwill and



indefinite lived intangible assets are no longer amortized but are reviewed annually for impairment. Separable intangible assets that are not deemed to have an indefinite life will continue to be amortized over their useful lives. The Company will apply the new accounting rules beginning February 2, 2002. The adoption of SFAS No. 141 and No. 142 will not have a material impact on the Company's financial position or results of operations.

The FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations" in June 2001. SFAS No. 143 applies to legal obligations associated with the retirement of certain tangible long-lived assets. This statement is effective for fiscal years beginning after June 15, 2002. Accordingly, the Company will adopt this statement on February 1, 2003. The Company believes the adoption of SFAS 143 will not have a material impact on its Consolidated Financial Statements.

In August 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." SFAS No. 144 is effective for fiscal years beginning after December 15, 2001, and interim periods within those fiscal years. The Company will adopt this statement on February 2, 2002. This statement addresses financial accounting and reporting for the impairment or disposal of long-lived assets. It supersedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of." The Company believes the adoption of SFAS No. 144 will not have a material impact on its Consolidated Financial Statements.

### **Forward Looking Statements / Risk Factors**

This discussion and analysis contains historical and forward-looking information. The forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The Company believes the assumptions underlying these forward-looking statements are reasonable; however, any of the assumptions could be inaccurate, and therefore, actual results may differ materially from those projected in the forward-looking statements as a result of certain risks and uncertainties. These risks include, but are not limited to, the following:

The Company's reputation and financial condition could be affected by the restatement. On April 30, 2001, the Company announced that it had become aware of certain accounting issues that would cause it to restate its audited financial statements for fiscal years 1998 and 1999, and to revise the unaudited financial information for the fiscal year 2000 that had been previously released by the Company. Following this announcement, more than 20 purported class action lawsuits have been filed against the Company and certain current and former officers and directors of the Company, asserting claims under the federal securities laws. These lawsuits have been consolidated into a single action pending in the United States District Court for the Middle District of Tennessee. In addition, six purported shareholder derivative lawsuits have been filed in Tennessee State Court against certain current and

former Company directors and officers and Deloitte & Touche LLP, the Company's former independent accountant, and two purported shareholder derivative lawsuits have been filed in the United States District Court for the Middle District of Tennessee against certain current and former Company directors and officers alleging that they breached their fiduciary duties to the Company. The Company has also been notified that the SEC is conducting an investigation into the circumstances that gave rise to the Company's April 30, 2001, announcement.

As discussed above, the Company has entered into settlement agreements with the purported class action plaintiffs and with the lead counsel in the lead shareholders derivative action. However, such settlement agreements are subject to conditions, including the completion of confirmatory due diligence and court approval. In the event that these settlement agreements do not become effective, the Company will incur additional significant expenditures in defending itself and the Company may be exposed to financial losses in excess of the amounts that the Company has agreed to pay in the settlement agreements. In addition, the publicity surrounding the litigation and the SEC investigation could affect the Company's reputation and have an impact on its financial condition.

The Company's business is modestly seasonal with the highest sales occurring during the fourth quarter, and adverse events during the fourth quarter could therefore affect the Company's financial condition. The Company realizes a large portion of its net sales and net income during the Christmas selling season. In anticipation of the holidays, the Company purchases substantial amounts of seasonal inventory and hires many temporary employees. If for any reason the Company's net sales during the Christmas selling season were to fall below seasonal norms, a seasonal merchandise inventory imbalance could result. If such an imbalance were to occur, markdowns might be required to minimize this imbalance. The Company's profitability and operating results could be adversely affected by unbudgeted markdowns.

Adverse weather conditions or other disruptions during the peak Christmas season could also affect the Company's net sales and could make it more difficult for the Company to obtain sufficient quantities of merchandise from its suppliers.

Competition in the retail industry could limit the Company's growth opportunities and reduce its profitability. The Company competes in the discount retail merchandise business, which is highly competitive. This competitive environment subjects the Company to the risk of reduced profitability resulting from reduced margins required to maintain the Company's competitive position. The Company competes with discount stores and with many other retailers, including mass merchandise, grocery, drug, convenience, variety and other specialty stores. Some of the nation's largest retail companies operate stores in areas where the Company operates. The Company's direct competitors in the dollar store retail category include Family Dollar, Dollar Tree, Fred's and various local, independent operators. Competitors from other

retail categories include CVS, Rite Aid, Walgreens, Eckerds, Wal-Mart and Kmart. The discount retail merchandise business is subject to excess capacity and some of the Company's competitors are much larger and have substantially greater resources than the Company. The competition for customers has intensified in recent years as larger competitors, such as Wal-Mart and Kmart, have moved into the Company's geographic markets. The Company remains vulnerable to the marketing power and high level of consumer recognition of these major national discount chains. The Company expects a further increase in competition from these national discount retailers.

The Company's financial performance is sensitive to changes in overall economic conditions that may impact consumer spending. The general slowdown in the United States economy may adversely affect the spending of the Company's consumers, which would likely result in lower net sales than expected on a quarterly or annual basis. Future economic conditions affecting disposable consumer income, such as employment levels, business conditions, fuel and energy costs, interest rates and tax rates, could also adversely affect the Company's business by reducing consumer spending or causing consumers to shift their spending to other products.

The Company's business is dependent on its vendors. The Company believes that it has generally good relations with its vendors and that it is generally able to obtain attractive pricing and other terms from vendors. If the Company fails to maintain good relations with its vendors, it may not be able to obtain attractive pricing with the consequence that its net sales or profit margins would be reduced. The Company may also face difficulty in obtaining needed inventory from its vendors because of interruptions in production or for other reasons, which would adversely affect the Company's business.

The efficient operation of the Company's business is heavily dependent on its information systems. As part of its technology update, the Company installed new flatbed scanners in all its stores and is in the process of installing new IBM registers and checkouts. The Company depends on a variety of other information technology systems for the efficient functioning of its business. The Company relies on certain software vendors to maintain and periodically upgrade many of these systems so that they can continue to support the Company's business. The software programs supporting many of the Company's systems were licensed to the Company by independent software developers. The inability of these developers to continue to maintain and upgrade these information systems and software programs would disrupt or reduce the efficiency of the Company's operations if it were unable to convert to alternate systems in an efficient and timely manner.

The Company is subject to interest rate risk. The Company is subject to market risk from exposure to changes in interest rates based on its financing, investing and cash management activities. The Company utilizes a

credit facility to fund working capital requirements, which is comprised of variable rate debt. See "Item 7A - Quantitative and Qualitative Disclosures About Market Risk."

The Company is dependent upon the smooth functioning of its distribution network. The Company relies upon the ability to replenish depleted inventory through deliveries to its distribution centers from vendors, and from the distribution centers to its stores by various means of transportation, including shipments by air, sea and truck on the roads and highways of the United States. Long-term disruptions to the national and international transportation infrastructure that lead to delays or interruptions of service will adversely affect the Company's business.

The Company is dependent on the continued availability of capital to support its business. As discussed above, in September 2002 the Company's synthetic leases, in the amount of \$383 million, will mature and the Company's \$175 million revolving credit facility will expire. The Company may also have to fund during the second half of 2002 the settlement of the class action litigation discussed above in an amount of up to \$162 million. In addition, the Company will continue to need capital to support its plans for future growth. A decline in the Company's generation of cash flow or the inability of the Company to obtain financing from third parties would have a material adverse effect on the Company.

On October 2, 2001, Standard & Poor's lowered the Company's corporate credit, senior unsecured debt and senior unsecured bank loan ratings from BBB+ to BBB-; as the date hereof, these ratings remain on CreditWatch with negative implications. On October 2, 2001, Moody's Investors Service, Inc. also lowered the Company's senior unsecured credit rating, from Baa2 to Ba1, which rating is on review for further possible downgrades. Credit ratings are generally used by investors to assess the ability of a company to meet its obligations. The downgrade in the Company's credit ratings may affect the Company's ability to obtain financing in the future, and will also affect the terms of any such financing.

Moreover, in order to issue debt securities to the public, the Company will have to comply with the registration requirements of the Securities and Exchange Commission, including among other things the requirement that the Company disclose "Selected Financial Information" for a period of five fiscal years. This may require the Company to restate its financial statements for periods prior to the 1998 fiscal year. Unless and until it is able to do so, the Company will not be able to access the public capital markets and as a result will be limited to non-public sources of financing, which may result in increased costs, less favorable terms, and/or lesser availability than might be obtainable in the public capital markets.

Caution should be taken not to place undue reliance on forward-looking statements made herein, since the statements speak only as of the date they are made. The Company undertakes no obligation to publicly release any revisions to any forward-looking statements contained herein to reflect events or circumstances occurring after the date of this report or to reflect the occurrence of unanticipated events.

## **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

### **Financial Risk Management**

The Company is exposed to market risk primarily from adverse changes in interest rates. To minimize such risk, the Company may periodically use financial instruments, including derivatives. As a matter of policy, the Company does not buy or sell financial instruments for speculative or trading purposes and all financial instrument transactions must be authorized and executed pursuant to Board of Directors approval. All financial instrument positions taken by the Company are used to reduce risk by hedging an underlying economic exposure. Because of high correlation between the financial instrument and the underlying exposure being hedged, fluctuations in the value of the financial instruments are generally offset by reciprocal changes in the value of the underlying economic exposure. The financial instruments used by the Company are straightforward instruments with liquid markets.

The Company has cash flow exposure relating to variable interest rates, primarily associated with revolving and seasonal lines of credit and certain lease obligations, and seeks to manage this risk through the use of interest rate swaps. The primary interest rate exposure on variable rate obligations is based on the London Interbank Offered Rate ("LIBOR").

At February 2, 2001, and January 28, 2000, the fair value of the Company's debt, excluding capital lease obligations, was estimated at approximately \$295.9 million and \$87.7 million, respectively, based on the estimated market value of the debt at those dates. Such fair value is less than the carrying value of the debt at February 2, 2001, and January 28, 2000, by approximately \$0.7 million and \$10.4 million, respectively.

At February 2, 2001, the Company was party to an interest rate swap agreement with a notional amount of \$100 million. The Company designated this agreement as a hedge of floating rate commitments relating to its synthetic lease agreements. Under the terms of the agreement, the Company will pay a fixed rate of 5.60% on the \$100 million notional amount through September 1, 2002. The fair value of the interest rate swap agreement was \$(0.4) million at February 2, 2001. The counterparty to the Company's interest rate swap agreement was a major financial institution. The Company is exposed to credit risk in the event of non-performance by such counterparty, the amount of which exposure is limited to

the unpaid portion of amounts due to the Company pursuant to the interest rate swap agreement, if any. Although there are no collateral requirements if a downgrade in the credit rating of the counterparty occurs, the Company believes that its exposure is mitigated by provisions in the interest rate swap agreement that allow the Company to offset any amounts payable by the Company to the counterparty with any amounts due to the Company from the counterparty.

At January 28, 2000, the Company was party to two interest rate swap agreements with notional amounts totaling \$200 million. These agreements fixed the Company's floating rate commitments relating to a portion of its synthetic lease agreements. Under the terms of these agreements, the Company paid a weighted average fixed rate of 5.14% on the \$200 million notional amount during fiscal years 1999 and 2000. The fair value of these agreements at January 28, 2000, was \$3.1 million. As of that date the maturity date for both agreements was expected to occur in September 2002. In January 2001, the Company paid \$0.2 million to terminate one of those interest rate swap agreements.

In both 1999 and 2000, the Company recognized any differences paid or received on interest rate swap agreements as adjustments to interest expense.

Based upon the Company's variable rate borrowing levels, a 1% change in interest rates would have resulted in a pre-tax fluctuation of approximately \$1.6 million and \$2.6 million, including the effects of interest rate swaps, in 1999 and 2000, respectively. In 2001, the Company does not anticipate this expense fluctuation to vary materially from the estimated impact in 2000.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

**CONSOLIDATED BALANCE SHEETS**  
(Dollars in thousands except per share amounts)

	February 2, 2001	January 28, 2000 (Restated)
	-----	-----
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 162,310	\$ 54,742
Merchandise inventories	896,235	952,432
Deferred income taxes	21,514	20,486
Other current assets	44,868	46,455
	-----	-----
Total current assets	1,124,927	1,074,115
	-----	-----
Property and equipment, at cost:		
Land	119,410	91,491
Buildings	286,476	250,919
Furniture, fixtures and equipment	823,234	651,656
Construction in progress	110,434	115,310
	-----	-----
Less accumulated depreciation and amortization	1,339,554	1,109,376
	366,460	271,987
	-----	-----
Net property and equipment	973,094	837,389
	-----	-----
Merchandise inventories	116,000	--
	-----	-----
Deferred income taxes	52,708	--
	-----	-----
Other assets, net	15,733	12,124
	-----	-----
Total assets	\$2,282,462	\$1,923,628
	=====	=====
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term obligations	\$ 9,035	\$ 1,828
Accounts payable	297,262	344,598
Accrued expenses and other	214,192	166,290
Income taxes	17,446	26,991
	-----	-----
Total current liabilities	537,935	539,707
	-----	-----
Long-term obligations	720,764	514,362
	-----	-----
Deferred income taxes	--	24,206
	-----	-----
Litigation settlement payable	162,000	--
	-----	-----
Commitments and contingencies		
Shareholders' equity:		
Series B junior participating preferred stock, stated value \$0.50 per share;		
Shares authorized: 10,000,000; Issued: None	--	--
Common stock, par value \$.50 per share;		
Shares authorized: 500,000,000; Issued: 2000-331,292,000;		
1999-330,822,000	165,646	165,411
Additional paid-in capital	283,925	229,906
Retained earnings	414,318	450,036
	-----	-----
	863,889	845,353
	-----	-----
Less common stock purchased by employee deferred compensation trust:		
2000-94,000; 1999-None	2,126	--
	-----	-----
Total shareholders' equity	861,763	845,353
	-----	-----
Total liabilities and shareholders' equity	\$2,282,462	\$1,923,628
	=====	=====

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

## CONSOLIDATED STATEMENTS OF INCOME

(Dollars in thousands except per share amounts)

	For the years ended					
	February 2, 2001		January 28, 2000 (Restated)		January 29, 1999 (Restated)	
	Amount	% of Net Sales	Amount	% of Net Sales	Amount	% of Net Sales
Net sales	\$4,550,571	100.00%	\$3,887,964	100.00%	\$3,220,989	100.00%
Cost of goods sold	3,299,668	72.51	2,794,466	71.87	2,328,470	72.29
Gross profit	1,250,903	27.49	1,093,498	28.13	892,519	27.71
Selling, general and administrative	934,899	20.54	772,928	19.88	639,534	19.86
Litigation settlement expense	162,000	3.56	--		--	
Operating profit	154,004	3.39	320,570	8.25	252,985	7.85
Interest expense	45,357	1.00	25,873	0.67	13,976	0.43
Income before taxes on income	108,647	2.39	294,697	7.58	239,009	7.42
Provisions for taxes on income	38,005	.84	108,024	2.78	88,075	2.73
Net income	\$ 70,642	1.55%	\$ 186,673	4.80%	\$ 150,934	4.69%
Diluted earnings per share	\$ 0.21		\$ 0.55		\$ 0.45	
Weighted average diluted shares (000)	333,858		337,904		335,763	
Basic earnings per share	\$ 0.21		\$ 0.61		\$ 0.53	

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



**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**  
**For the years ended February 2, 2001, January 28, 2000, and January 29, 1999**  
(Dollars in thousands except per share amounts)

	Preferred Stock	Common Stock	Additional Paid-in Capital	Retained Earnings	Treasury Stock	Total
Balances, January 30, 1998 (as previously reported)	\$ 858	\$ 163,149	\$ 301,558	\$ 318,858	\$(200,527)	\$ 583,896
Restatement adjustments	--	--	761	(23,791)	--	(23,030)
Balances, January 30, 1998 (restated)	\$ 858	\$ 163,149	\$ 302,319	\$ 295,067	\$(200,527)	\$ 560,866
Net income	--	--	--	150,934	--	150,934
Cash dividends, \$0.08 per common share	--	--	--	(24,428)	--	(24,428)
Cash dividends, \$2.04 per preferred share	--	--	--	(3,497)	--	(3,497)
Issuance of common stock under stock incentive plans (5,717,000 shares)	--	2,858	27,902	--	--	30,760
Tax benefit from exercise of options	--	--	32,252	--	--	32,252
Repurchase of common stock (3,901,000 shares)	--	(1,950)	--	(71,286)	--	(73,236)
Transfer to 401(k) plan (51,000 shares)	--	16	739	--	--	755

	Preferred Stock	Common Stock	Additional Paid-in Capital	Retained Earnings	Treasury Stock	Total
Balances, January 29, 1999 (restated)	\$ 858	\$ 164,073	\$ 363,212	\$ 346,790	\$ (200,527)	\$ 674,406
Net income	--	--	--	186,673	--	186,673
Cash dividends, \$0.10 per common share	--	--	--	(32,879)	--	(32,879)
Cash dividends, \$0.69 per preferred share	--	--	--	(1,178)	--	(1,178)
Issuance of common stock under stock incentive plans (5,442,000 shares)	--	2,721	36,076	--	--	38,797
Tax benefit from exercise of options	--	--	30,287	--	--	30,287
Repurchase of common stock (2,766,000 shares)	--	(1,383)	--	(49,370)	--	(50,753)
Conversion of preferred to common (51,133,000 shares)	(858)	--	(199,669)	--	200,527	--
Balances, January 28, 2000 (restated)	\$ --	\$ 165,411	\$ 229,906	\$ 450,036	\$ --	\$ 845,353
Net income	--	--	--	70,642	--	70,642
Cash dividends, \$0.12 per common share	--	--	--	(42,266)	--	(42,266)
Issuance of common stock under stock incentive plans (4,103,000 shares)	--	2,052	32,078	--	--	34,130
Tax benefit from exercise of options	--	--	19,018	--	--	19,018
Repurchase of common stock, net (3,634,000 shares)	--	(1,817)	2,923	(64,094)	--	(62,988)
Purchase of common stock by employee deferred compensation trust (94,000 shares)	--	--	--	--	(2,126)	(2,126)
Balances, February 2, 2001	\$ --	\$ 165,646	\$ 283,925	\$ 414,318	\$ (2,126)	\$ 861,763

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

CONSOLIDATED STATEMENTS OF CASH FLOWS  
(Dollars in thousands)

	For the years ended		
	February 2, 2001	January 28, 2000 (Restated)	January 29, 1999 (Restated)
Cash flows from operating activities:			
Net income	\$ 70,642	\$ 186,673	\$ 150,934
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	111,399	79,707	57,414
Deferred income taxes	(77,942)	(2,261)	(3,889)
Tax benefit from stock option exercises	19,018	30,287	32,252
Litigation settlement	162,000	--	--
Change in operating assets and liabilities:			
Merchandise inventories	(59,803)	(158,836)	(171,239)
Other current assets	4,650	(15,351)	(11,230)
Accounts payable	(47,336)	78,002	86,623
Accrued expenses and other	39,391	(2,144)	14,931
Income taxes	(9,545)	4,125	20,640
Other	3,031	(3,480)	(2,745)
<b>Net cash provided by operating activities</b>	<b>215,505</b>	<b>196,722</b>	<b>173,691</b>
Cash flows from investing activities:			
Purchase of property and equipment	(216,584)	(142,070)	(143,382)
Proceeds from sale of property and equipment	97,612	3,051	222
<b>Net cash used in investing activities</b>	<b>(118,972)</b>	<b>(139,019)</b>	<b>(143,160)</b>
Cash flows from financing activities:			
Issuance of short-term borrowings	220,000	295,324	165,000
Repayments of short-term borrowings	(220,000)	(295,324)	(186,933)
Issuance of long-term obligations	199,595	22,848	72,257
Repayments of long-term obligations	(112,276)	(7,705)	(2,667)
Payment of cash dividends	(42,237)	(33,791)	(26,661)
Proceeds from exercise of stock options	34,130	38,797	30,727
Repurchase of common stock, net	(62,988)	(50,753)	(73,236)
Purchase of common stock by employee deferred compensation trust	(2,126)	--	--
Settlement of derivative financial instruments	(3,063)	--	--
Transfer to ESOP	--	--	755
<b>Net cash provided by / (used in) financing activities</b>	<b>11,035</b>	<b>(30,604)</b>	<b>(20,758)</b>
Net increase in cash and cash equivalents	107,568	27,099	9,773
Cash and cash equivalents, beginning of year	54,742	27,643	17,870
<b>Cash and cash equivalents, end of year</b>	<b>\$ 162,310</b>	<b>\$ 54,742</b>	<b>\$ 27,643</b>
Supplemental cash flow information:			
Cash paid during year for:			
Interest	\$ 50,027	\$ 28,026	\$ 16,166
Income taxes	\$ 104,311	\$ 77,038	\$ 43,512
Supplemental schedule of noncash investing and financing activities:			
Purchase of property and equipment under capital lease obligations	\$ 126,290	\$ 272,233	\$ 120,863
Conversion of preferred stock to common stock	--	\$ 200,527	--

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

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### 1. Basis of presentation and accounting policies

#### Basis of presentation

These notes contain references to the years 2000, 1999 and 1998, which represent fiscal years ended February 2, 2001, January 28, 2000, and January 29, 1999, respectively. The Company's fiscal year ends on the Friday closest to January 31. There were 53 weeks in the fiscal year ended February 2, 2001. There were 52 weeks in the fiscal years ended January 28, 2000, and January 29, 1999. The consolidated financial statements include all subsidiaries. Intercompany transactions have been eliminated.

The Company sells general merchandise on a retail basis through 5,000 stores (as of February 2, 2001) located predominantly in small towns in the Southeastern and Midwestern United States. The Company has distribution centers ("DCs") in Scottsville, Kentucky; Ardmore, Oklahoma; South Boston, Virginia; Indianola, Mississippi; Fulton, Missouri; Alachua, Florida and Zanesville, Ohio.

All share and per share data reflect the effect of common stock splits.

#### Cash and cash equivalents

Cash and cash equivalents include highly liquid investments with original maturities of three months or less when purchased.

#### Inventories

Inventories are stated at the lower of cost or market with cost determined using the retail last-in, first-out ("LIFO") method. The excess of current cost over LIFO cost was approximately \$18.3 million at February 2, 2001, \$18.7 million at January 28, 2000, and \$18.5 million at January 29, 1999. Current cost is determined using the retail first-in first-out method. LIFO reserves decreased \$0.4 million in 2000, increased \$0.2 million in 1999 and decreased \$1.4 million in 1998. Costs directly associated with warehousing and distribution are capitalized into inventory.

#### Pre-opening costs

Pre-opening costs for new stores are expensed as incurred.

#### Property and equipment

Property and equipment are recorded at cost. The Company provides for depreciation on a straight-line basis over the following estimated useful lives: 40 years for buildings and 3 to 10 years for furniture, fixtures and

equipment. Amortization of capital lease assets is included in depreciation expense. Depreciation expense related to property and equipment was approximately \$110.9 million in 2000, \$79.4 million in 1999 and \$56.4 million in 1998.

#### Software costs

Costs associated with the application development stage of significant new computer software applications for internal use are deferred and amortized over periods ranging from three to five years. Costs associated with the preliminary and post-implementation stages of these projects are expensed as incurred.

#### **Impairment**

When indicators of impairment are present, the Company evaluates the carrying value of property and equipment and intangibles in relation to the operating performance and future undiscounted cash flows of the underlying assets. The Company adjusts the net book value of the underlying assets if the sum of expected future cash flows is less than the book value. Assets to be disposed of are adjusted to the fair value less the cost to sell if less than the book value. In 2000, the Company recorded an approximate \$3.6 million impairment charge to reduce the carrying value of the closed Homerville, Georgia DC that is included in SG&A expense.

#### Other assets

Other assets consist primarily of debt issuance costs and deferred finance charges which are amortized over the life of the related obligation.

#### Insurance claims provisions

The Greater Cumberland Insurance Company, a Vermont-based, wholly-owned captive insurance subsidiary, charges Dollar General's subsidiary companies competitive premium rates to insure workers' compensation and non-property general liability claims risk. The insurance company currently insures no unrelated third-party risk.

The Company retains a significant portion of the risk for its workers' compensation, employee health insurance, general liability, property and automobile coverage. Accordingly, provisions are made for the Company's actuarially determined estimates of undiscounted future claim costs for such risks. To the extent that subsequent claim costs vary from those estimates, future earnings will be affected.

## Fair value of financial instruments

The carrying amounts reflected in the consolidated balance sheets for cash, cash equivalents, receivables and payables approximate their respective fair values. At February 2, 2001, and January 28, 2000, the fair value of the Company's debt, excluding capital lease obligations, was approximately \$295.9 million and \$87.7 million, respectively, based upon the estimated market value of the debt at those dates. Such fair value is less than the carrying value of the debt at February 2, 2001, and January 28, 2000, by approximately \$0.7 million and \$10.4 million, respectively. Fair values are based primarily on quoted prices for those or similar instruments. A comparison of the carrying value and fair value of the Company's derivative financial instruments is included in the section entitled "Derivative financial instruments" in Note 1.

## Derivative financial instruments

At February 2, 2001, the Company was party to an interest rate swap agreement with a notional amount of \$100 million. The Company designated this agreement as a hedge of the floating rate commitments relating to its synthetic lease agreements. Under the terms of the agreement, the Company will pay a fixed rate of 5.60% on the \$100 million notional amount through September 1, 2002. The fair value of the interest rate swap agreement was (\$0.4) million at February 2, 2001.

At January 28, 2000, the Company was party to two interest rate swap agreements with notional amounts totaling \$200 million. These agreements fixed the Company's floating rate commitments relating to a portion of its synthetic lease agreements. Under the terms of these agreements, the Company paid a weighted average fixed rate of 5.14% on the \$200 million notional amount during fiscal years 1999 and 2000. The fair value of these agreements at January 28, 2000, was \$3.1 million. As of that date, the maturity date of both agreements was expected to occur in September 2002. In January 2001, the Company paid \$0.2 million to terminate one of these interest rate swap agreements.

The Company does not hold or issue derivative financial instruments for speculative or trading purposes. The Company recognizes floating rate interest differentials as adjustments to expense in the period they occur. Gains and losses on terminations of interest rate swap agreements are deferred and amortized to expense over the shorter of the original term of the agreements or the remaining life of the associated outstanding commitment. Approximately \$2.9 million of realized losses relating to the early termination of interest rate derivatives were deferred at February 2, 2001. The fair values of the Company's interest rate swap agreements at February 2, 2001, and January 28, 2000, were based on dealer quotes. These values represent the amount the Company would receive or pay to terminate the agreements taking into consideration current interest rates. At February 2, 2001, the counterparty to the Company's interest rate swap agreement was a major financial institution. This counterparty exposes

the Company to credit risk in the event of non-performance. The amount of such exposure is limited to the unpaid portion of amounts due to the Company pursuant to the interest rate swap agreement, if any. Although there are no collateral requirements if a downgrade in the credit rating of the counterparty occurs, management believes that this exposure is mitigated by provisions in the interest rate swap agreement which allow for the legal right of offset of any amounts due to the Company from the counterparty with any amounts payable to the counterparty by the Company. As a result, management considers the risk of counterparty default to be minimal.

#### Stock-based compensation

The Company grants stock options having a fixed number of shares and an exercise price equal to the fair value of the stock on the date of grant to certain executive officers, directors and key employees. The Company accounts for stock option grants in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" (APB No. 25), and related interpretations because the Company believes the alternative fair value accounting provided for under Statement of Financial Accounting Standards ("SFAS") Statement No. 123, "Accounting for Stock-Based Compensation" (SFAS No. 123), requires the use of option valuation models that were not developed for use in valuing employee stock options. Under APB No. 25, compensation expense is generally not recognized for plans in which the exercise price of the stock options equals the market price of the underlying stock on the date of grant and the number of shares subject to exercise is fixed.

The Company has historically permitted employees to use shares acquired through the exercise of stock options to satisfy tax-withholding requirements in excess of minimum employer statutory withholding rates. The Company recognizes compensation expense for such stock option exercises and grants in accordance with the provisions of EITF 87-6, "Adjustments Relating to Stock Compensation Plans," and FIN No. 44, "Accounting for Certain Transactions Involving Stock Compensation - An Interpretation of APB 25," as applicable. On December 17, 2001, the Company modified its personnel policies to eliminate the employee excess tax-withholding option.

The Company recognized compensation expense relating to its stock option plans of approximately \$1.9 million, \$3.0 million and \$1.8 million in 2000, 1999 and 1998, respectively.

#### Revenue recognition

The Company recognizes sales at the time the sale is made to the customer.

### Advertising costs

Advertising costs are expensed as incurred and were \$7.0 million, \$6.8 million and \$5.7 million in 2000, 1999 and 1998, respectively.

### Interest during construction

To assure that interest costs properly reflect only that portion relating to current operations, interest on borrowed funds during the construction of property and equipment is capitalized. Interest costs capitalized were approximately \$6.7 million, \$3.1 million and \$3.0 million in 2000, 1999 and 1998, respectively.

### Income taxes

The Company reports income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes." Under SFAS No. 109, the asset and liability method is used for computing future income tax consequences of events, which have been recognized in the Company's consolidated financial statements or income tax returns. Deferred income tax expense or benefit is the net change during the year in the Company's deferred income tax assets and liabilities.

### Management estimates

The preparation of financial statements and related disclosures in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

At February 2, 2001, a portion of the Company's merchandise inventory is in excess of the amounts that management believes will be sold in the next fiscal year. Management has developed a program to sell this inventory. See Note 4, Inventory Markdown. However, there can be no assurance that the Company will be able to sell all of this inventory by the end of 2002 without a further markdown.

The Company is exposed to losses as a result of various lawsuits (see Note 9 Commitments and Contingencies) related to the restatement. The Company has entered into settlement agreements with the lead plaintiffs of most of these lawsuits, as a result of which the Company has recognized an expense of \$162.0 million in the fourth quarter of 2000 for the estimated costs of resolving these actions. The Company intends to assert defenses against these suits in the event that the settlement agreements that have been reached to date do not successfully resolve these matters. As these cases are at an early stage,



the amount of potential loss, if any, should the settlement agreements not become effective cannot be reasonably estimated.

The Company records gain contingencies when realized.

#### Accounting pronouncements

SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," is effective for all fiscal years beginning after June 15, 2000. SFAS No. 133, as amended, establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts and for hedging activities. Under SFAS No. 133, certain contracts that were not formerly considered derivatives may now meet the definition of a derivative. The Company adopted SFAS No. 133 effective February 3, 2001. The adoption of SFAS No. 133 did not have a significant impact on the financial position, results of operations or cash flows of the Company.

The Company adopted the Securities and Exchange Commission's Staff Accounting Bulletin ("SAB") No. 101, "Revenue Recognition in Financial Statements," in the fourth quarter of 2000. The adoption of SAB No. 101 did not have a material effect on the consolidated financial statements.

In June 2001, the Financial Accounting Standards Board (the "FASB") issued SFAS No. 141, "Business Combinations," and SFAS No. 142, "Goodwill and Other Intangible Assets." Under the new rules, goodwill and indefinite lived intangible assets are no longer amortized but are reviewed annually for impairment. Separable intangible assets that are not deemed to have an indefinite life will continue to be amortized over their useful lives. The Company will apply the new accounting rules beginning February 2, 2002. The adoption of SFAS No. 141 and No. 142 will not have a material impact on the Company's financial position or results of operations.

The FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations" in June 2001. SFAS No. 143 applies to legal obligations associated with the retirement of certain tangible long-lived assets. This statement is effective for fiscal years beginning after June 15, 2002. Accordingly, the Company will adopt this statement on February 1, 2003. The Company believes the adoption of SFAS No. 143 will not have a material impact on its Consolidated Financial Statements.

In August 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." SFAS No. 144 is effective for fiscal years beginning after December 15, 2001, and interim periods within those fiscal years. The Company will adopt this statement on February 2, 2002. This statement addresses financial accounting and reporting for the impairment or disposal of long-lived assets. It supersedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of."

The Company believes the adoption of SFAS No. 144 will not have a material impact on its Consolidated Financial Statements.

## 2. Restatement of Financial Statements

### Overview

On April 30, 2001, the Company announced that it had become aware of certain accounting issues that would cause it to restate its audited financial statements for fiscal years 1999 and 1998, and to revise the unaudited financial information for the fiscal year 2000 that had been previously released by the Company. The Audit Committee of the Board of Directors promptly assumed oversight of the Company's response to the accounting issues and commenced an independent review of these accounting issues to prepare the Committee for its role in reviewing the restated financial statements, assisted by the law firm of Dechert, Price and Rhoads and the independent accounting firm Arthur Andersen, LLP. The Company further announced on June 7, 2001, that its Chairman and Chief Executive Officer had directed the Company's financial staff and its outside professional consultants to review the Company's reporting, record keeping, accounting and internal control policies and practices, and that until such review had been concluded the Company would not be in a position to update its prior financial guidance. The Company's financial staff conducted its review of these issues with the assistance of the Company's outside counsel, Debevoise & Plimpton, and accounting consultants from KPMG LLP.

Consistent with the activities of the Audit Committee and the Company's review of its financial statements for the 1998, 1999 and 2000 fiscal years, the Company has restated its audited financial statements for fiscal years 1999 and 1998, and has set forth in these Consolidated Financial Statements the Company's audited financial results for fiscal year 2000, which restate the unaudited financial information for the fiscal year 2000 that had been previously released by the Company. Previously released financial data for such periods should not be relied upon. For restated unaudited quarterly financial data for 2000 and 1999, see Note 14.

Restated net income and diluted earnings per share for 2000 are \$70.6 million and \$0.21, respectively, as compared to the \$206.0 million and \$0.62 previously reported. The restated results for 2000 include a pre-tax expense of \$162.0 million to settle the Company's restatement-related litigation described below. Restated net income totaled \$186.7 million in fiscal 1999 and \$150.9 million in fiscal 1998, equaling diluted earnings per share of \$0.55, and \$0.45. The Company originally reported, prior to the restatement, net income of \$219.4 million in fiscal 1999 and \$182.0 million in fiscal 1998, equaling diluted earnings per share for those periods of \$0.65 and \$0.54, respectively.

The issues for restatement, excluding the litigation settlement expense, can be broken down into four general categories: (i) items impacting the cost of goods sold that were recorded incorrectly and/or that reflect more accurate estimates, (ii) selling, general and administrative ("SG&A") expenses that were either incurred but not accrued, or recorded incorrectly, (iii) additional interest expense required as a result of restating certain operating leases as capital leases and financing obligations, and the addition of capital lease and financing obligation liabilities to the Company's balance sheets, and (iv) changes to the Company's income tax provision to correct errors.

The effects of these issues on diluted earnings per share over the three-year period is summarized in the following table:

Adjustments to diluted earnings per share*:	Year Ended			
	3 Year Cumulative	February 2, 2001	January 28, 2000	January 29, 1999
Cost of goods sold	\$ (0.05)	\$ (0.01)	\$ (0.01)	\$ (0.03)
Selling, general & administrative expenses	(0.11)	(0.02)	(0.05)	(0.04)
Interest expense	(0.11)	(0.06)	(0.04)	(0.01)
Tax provision	(0.02)	(0.01)	(0.00)	(0.01)
	-----	-----	-----	-----
	\$ (0.30)	\$ (0.11)	\$ (0.10)	\$ (0.09)
	=====	=====	=====	=====

\* Totals may not foot due to rounding; excludes litigation settlement expense.

Although the issues for restatement in total had a negative aggregate impact on diluted earnings per share over the three year-period, some of the issues resulted in the recording of additional income, while others affected multiple years but had no impact on earnings over the combined three-year period.

#### Effects of restatement

In addition to the restatement of diluted earnings per share, the correction of many of the issues identified by the Company also required an adjustment to previously reported balance sheets. The following statements of income and balance sheets reconcile previously reported and restated financial information. Dollar amounts are in thousands except for per share amounts. Some of the amounts in the following tables may not foot due to rounding.

**CONSOLIDATED STATEMENT OF INCOME**

Year ended February 2, 2001

	As Previously Released (unaudited)	Restatement Related Adjustments	As Restated
	Amount	Amount	Amount
Net sales	\$ 4,551,511	\$ (940)	\$ 4,550,571
Cost of goods sold	3,293,126	6,542	3,299,668
Gross profit	1,258,385	(7,482)	1,250,903
Selling, general and administrative	923,760	11,139	934,899
Litigation settlement expense	--	162,000	162,000
Operating profit	334,625	(180,621)	154,004
Interest expense	11,508	33,849	45,357
Income before taxes on income	323,117	(214,470)	108,647
Provisions for taxes on income	117,098	(79,093)	38,005
Net income	\$ 206,019	\$ (135,377)	\$ 70,642
Diluted earnings per share	\$ 0.62	\$ (0.41)	\$ 0.21
Weighted average diluted shares (000)	333,858	--	333,858
Basic earnings per share	\$ 0.62	\$ (0.41)	\$ 0.21

## CONSOLIDATED BALANCE SHEET

	As of February 2, 2001		
	As Previously Released (unaudited)	Restatement Related Adjustments	As Restated
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 141,453	\$ 20,857	\$ 162,310
Merchandise inventories	1,050,693	(154,458)	896,235
Deferred income taxes	8,074	13,440	21,514
Other current assets	69,108	(24,240)	44,868
<b>Total current assets</b>	<b>1,269,328</b>	<b>(144,401)</b>	<b>1,124,927</b>
Property and equipment, at cost:			
Land	5,948	113,462	119,410
Buildings	34,665	251,811	286,476
Furniture, fixtures and equipment	687,201	136,033	823,234
Construction in progress	68,705	41,729	110,434
<b>Total</b>	<b>796,519</b>	<b>543,035</b>	<b>1,339,554</b>
Less accumulated depreciation and amortization	305,756	60,704	366,460
<b>Net property and equipment</b>	<b>490,763</b>	<b>482,331</b>	<b>973,094</b>
Merchandise inventories	--	116,000	116,000
Deferred income taxes	--	52,708	52,708
Other assets, net	16,045	(312)	15,733
<b>Total assets</b>	<b>\$ 1,776,136</b>	<b>\$ 506,326</b>	<b>\$ 2,282,462</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>			
Current liabilities:			
Current portion of long-term obligations	\$ 4,560	\$ 4,475	\$ 9,035
Accounts payable	284,768	12,494	297,262
Accrued expenses and other	137,350	76,842	214,192
Income taxes	8,648	8,798	17,446
<b>Total current liabilities</b>	<b>435,326</b>	<b>102,609</b>	<b>537,935</b>
Long-term obligations	214,236	506,528	720,764
Deferred income taxes	51,290	(51,290)	--
Litigation settlement payable	--	162,000	162,000
Shareholders' equity:			
Series B junior participating preferred stock	--	--	--
Common stock	165,646	--	165,646
Additional paid-in capital	274,112	9,813	283,925
Retained earnings	637,652	(223,334)	414,318
Less common stock purchased by employee deferred compensation trust	2,126	--	2,126
<b>Total shareholders' equity</b>	<b>1,075,284</b>	<b>(213,521)</b>	<b>861,763</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$ 1,776,136</b>	<b>\$ 506,326</b>	<b>\$ 2,282,462</b>

## CONSOLIDATED STATEMENT OF INCOME

For the year ended January 28, 2000

	As Previously Reported	Restatement Related Adjustments	As Restated
	Amount	Amount	Amount
Net sales	\$3,887,964	\$ 0	\$3,887,964
Cost of goods sold	2,790,173	4,293	2,794,466
Gross profit	1,097,791	(4,293)	1,093,498
Selling, general and administrative	748,489	24,439	772,928
Operating profit	349,302	(28,732)	320,570
Interest expense	5,157	20,716	25,873
Income before taxes on income	344,145	(49,448)	294,697
Provisions for taxes on income	124,718	(16,694)	108,024
Net income	\$ 219,427	\$ (32,754)	\$ 186,673
Diluted earnings per share	\$ 0.65	\$ (0.10)	\$ 0.55
Weighted average diluted shares (000)	336,963	941	337,904
Basic earnings per share	\$ 0.72	\$ (0.11)	\$ 0.61

## CONSOLIDATED BALANCE SHEET

As of January 28, 2000

	As Previously Reported	Restatement Related Adjustments	As Restated
<b>ASSETS</b>			
<b>Current assets:</b>			
Cash and cash equivalents	\$ 58,789	\$ (4,047)	\$ 54,742
Merchandise inventories	985,715	(33,283)	952,432
Deferred income taxes	5,995	14,491	20,486
Other current assets	45,036	1,419	46,455
Total current assets	1,095,535	(21,420)	1,074,115
<b>Property and equipment, at cost:</b>			
Land	5,907	85,584	91,491
Buildings	32,807	218,112	250,919
Furniture, fixtures and equipment	554,598	97,058	651,656
Construction in progress	4,225	111,085	115,310
	597,537	511,839	1,109,376
Less accumulated depreciation and amortization	251,064	20,923	271,987
Net property and equipment	346,473	490,916	837,389
Other assets, net	8,933	3,191	12,124
Total assets	\$ 1,450,941	\$ 472,687	\$ 1,923,628

LIABILITIES AND  
SHAREHOLDERS' EQUITY

Current liabilities:

Current portion of long-term obligations	\$ 1,233	\$ 595	\$ 1,828
Accounts payable	334,554	10,044	344,598
Accrued expenses and other	121,375	44,915	166,290
Income taxes	15,135	11,856	26,991
<b>Total current liabilities</b>	<b>472,297</b>	<b>67,410</b>	<b>539,707</b>
Long-term obligations	1,200	513,162	514,362
Deferred income taxes	51,523	(27,317)	24,206
Shareholders' equity:			
Series B junior participating preferred stock	--	--	--
Common stock	132,346	33,065	165,411
Additional paid-in capital	255,581	(25,675)	229,906
Retained earnings	537,994	(87,958)	450,036
<b>Total shareholders' equity</b>	<b>925,921</b>	<b>(80,568)</b>	<b>845,353</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$ 1,450,941</b>	<b>\$ 472,687</b>	<b>\$ 1,923,628</b>

**CONSOLIDATED STATEMENT OF INCOME**

For the year ended January 29, 1999

	As Previously Reported	Restatement Related Adjustments	As Restated
	Amount	Amount	Amount
Net sales	\$3,220,989	\$ --	\$3,220,989
Cost of goods sold	2,315,112	13,358	2,328,470
Gross profit	905,877	(13,358)	892,519
Selling, general and administrative	616,613	22,921	639,534
Operating profit	289,264	(36,279)	252,985
Interest expense	8,349	5,627	13,976
Income before taxes on income	280,915	(41,906)	239,009
Provisions for taxes on income	98,882	(10,807)	88,075
Net income	\$ 182,033	\$ (31,099)	\$ 150,934
Diluted earnings per share	\$ 0.54	\$ (0.09)	\$ 0.45
Weighted average diluted shares (000)	335,498	265	335,763
Basic earnings per share	\$ 0.65	\$ (0.11)	\$ 0.53

3. Cash and short-term borrowings

The Company's cash management system provides for daily investment of available balances and the funding of outstanding checks when presented for payment. Outstanding but unresented checks totaling approximately \$84.3 million and \$127.5 million at February 2, 2001, and January 28, 2000,

respectively, have been included in accounts payable. Upon presentation for payment, they will be funded through available cash balances or the Company's revolver.

The Company had seasonal lines of credit with banks totaling \$80.0 million at February 2, 2001, and \$105.0 million at January 28, 2000. The lines of credit are subject to periodic review by the lending institutions, which may increase or decrease the amounts available. There were no borrowings outstanding under these lines of credit at February 2, 2001, and January 28, 2000. The Company also has a \$175.0 million revolver that expires in September 2002. There were no borrowings outstanding under the revolver at February 2, 2001, or January 28, 2000. Until the restatement-related legal proceedings referred to below in Note 9 are resolved, the Company may need waivers in order to draw on the revolver. The seasonal lines of credit have expired.

The weighted average interest rates for all short-term borrowings were 6.6% and 5.4% for 2000 and 1999, respectively. The revolver contains certain restrictive covenants. At December 31, 2001, the Company was in compliance with all such covenants (see Note 7).

At February 2, 2001, and January 28, 2000, the Company had outstanding commercial letters of credit totaling \$60.8 million and \$53.6 million, respectively. Total amounts available for the issuance of commercial letters of credit were \$210.0 million at February 2, 2001, and \$285.0 million at January 28, 2000.

#### 4. Inventory markdown

In the fourth quarter of 2000, the Company determined that it had certain excess inventory that would require a markdown to assist with its disposition. Accordingly, the Company recorded a markdown which had the impact of reducing inventory at cost at February 2, 2001, and increasing cost of goods sold in the fourth quarter of 2000 by approximately \$21.5 million. The Company believes that this markdown will be adequate to ensure the sale of the excess inventory during fiscal years 2001 and 2002. However, there can be no assurance that the Company will be able to sell all of this inventory by the end of 2002 without a further markdown. The Company moved \$116.0 million of inventory out of current assets at February 2, 2001, that it does not expect to sell during 2001.



## 5. Accrued expenses and other

Accrued expenses and other consist of the following:

(In thousands)	2000	1999
Compensation and benefits	\$ 54,559	\$ 58,707
Insurance	46,238	35,710
Taxes (other than taxes on income)	27,507	20,864
Dividends	10,598	8,467
Freight	14,367	10,827
Other	60,923	31,715
	\$214,192	\$166,290

## 6. Income taxes

The provision for taxes on income consists of the following:

(In thousands)	2000	1999	1998
Current:			
Federal	\$ 103,158	\$ 100,367	\$ 83,969
State	12,789	9,918	7,995
	115,947	110,285	91,964
Deferred:			
Federal	(66,781)	(965)	(3,328)
State	(11,161)	(1,296)	(561)
	(77,942)	(2,261)	(3,889)
	\$ 38,005	\$ 108,024	\$ 88,075

A reconciliation between actual income taxes and amounts computed by applying the federal statutory rate to income before income taxes is summarized as follows (in thousands):

	2000		1999		1998	
U.S. Federal statutory rate on earnings before income taxes	\$ 38,026	35.0%	\$ 103,144	35.0%	\$ 83,653	35.0%
State income taxes, net of federal income tax benefit	402	0.4%	4,759	1.6%	4,781	2.0%
Jobs credits, net of federal income tax benefit	(1,123)	(0.9)%	(755)	(0.2)%	(642)	(0.2)%
Increase in valuation allowance	657	0.5%	844	0.3%	51	0.0%
Other	43	0.0%	32	0.0%	232	0.1%
Actual income taxes	\$ 38,005	35.0%	\$ 108,024	36.7%	\$ 88,075	36.9%

Sources of deferred tax assets and deferred tax liabilities are as follows (in thousands):

	2000	1999
Deferred tax assets:		
Inventories	\$ 1,897	\$ 4,287
Deferred compensation expense	3,437	2,978
Accrued expenses and other	8,451	8,489
Workers compensation-related insurance reserves	4,003	2,991
Deferred gain on sale/leasebacks	3,702	479
Litigation settlement	63,000	--
Other	2,839	2,054
State tax net operating loss carryforwards	2,506	2,350
State tax credit carryforwards	813	898
	90,648	24,526
Less valuation allowance	(2,117)	(1,460)
Total deferred tax assets	88,531	23,066
Deferred tax liabilities:		
Property and equipment	(9,968)	(24,561)
Compensation-related liabilities	(1,976)	(1,711)
Other	(2,365)	(514)
Total deferred tax liabilities	(14,309)	(26,786)
Net deferred tax assets (liabilities)	\$ 74,222	\$ (3,720)

State net operating loss carryforwards as of February 2, 2001, totaled approximately \$76.3 million that will expire between 2005 and 2020. The valuation allowance has been provided for certain state loss carryforwards and state tax credits. The change in the valuation allowance was \$657,000, \$844,000 and \$51,000 as of 2000, 1999 and 1998, respectively. Based upon expected future income, management believes that it is more likely than not that the results of operations will generate sufficient taxable income to realize the deferred tax assets after giving consideration to the valuation allowance.

## 7. Long-term obligations

Long-term obligations consist of the following (in thousands):

	February 2, 2001	January 28, 2000
8 5/8% Notes due June 15, 2010, net of discount of \$405	\$ 199,595	\$ --
Capital lease obligations	433,099	418,001
Financing obligations (see Note 9)	97,002	98,039
Other notes payable, weighted average fixed interest rate of 10.5% at February 2, 2001, payable in monthly installments to January 2003	103	150
	729,799	516,190
Less: current portion	(9,035)	(1,828)
Long-term portion	\$ 720,764	\$ 514,362

On June 21, 2000, the Company sold \$200 million principal amount of 8 5/8% Notes due June 2010 (the "Old Notes") in a private offering under Rule 144A of the Securities Act of 1933. Subsequent to the offering, the Company and its guarantor subsidiaries filed a registration statement on Form S-4 enabling the Company to exchange its 8 5/8% Exchange Notes due June 2010 (the "New Notes" and, together with the Old Notes, the "Notes") for all outstanding Old Notes.

The Notes require semi-annual interest payments in June and December of each year through June 15, 2010, at which time the entire balance becomes due and payable. In addition, the Notes may be redeemed by the holders thereof at 100% of the principal amount, plus accrued and unpaid interest, on June 15, 2005. The Notes contain certain restrictive covenants. At February 2, 2001, the Company was in compliance with all such covenants.

As of February 2, 2001, the Company had \$383 million outstanding under two synthetic lease facilities (the "Facilities") maturing in September 2002, one with \$212 million in outstanding capital leases and the other with \$171 million in outstanding capital leases. The leases allow for the use and occupancy of certain real property, including approximately 400 retail stores, two distribution centers and the Company's headquarters in Goodlettsville, Tennessee. The Company plans to purchase the properties from the lessor at the maturity of the Facilities. The Company is currently working on a plan to refinance the lease obligations. The Facilities have the same two financial covenants as the revolving credit facility, a fixed charge test and a leverage test. The facility with \$212 million in outstanding capital leases is funded by a syndicate of financial institutions; borrowings under the facility were priced at LIBOR plus 102.5 basis points as of December 14, 2001. The pricing spread over LIBOR fluctuates based on the Company's debt ratings as published by the debt rating agencies. The Company's spread over LIBOR increased to 102.5 basis points from 15 basis points as part of the October 19, 2001 waiver and amendment as described below. The facility with \$171 million in outstanding capital leases is funded by commercial paper issued at prevailing market rates by a commercial paper funding entity and is secured by a letter of credit facility.

In June 2000, distribution centers in Indianola, Mississippi and Fulton, Missouri were purchased from the Facilities and sold in sale-leaseback transactions resulting in twenty-two year, triple net leases with renewal options for an additional thirty years. These were refinanced to bolster liquidity and diversify sources of funds.

Throughout 2001, the Company obtained waivers from its lenders to extend the requirement to deliver its audited 2000 financial statements, and unaudited 2001 quarterly financial statements, as a result of delays related to the restatement described herein. The Company executed waivers with its lenders under the Facilities and revolving credit facility on May 10, 2001, June 8, 2001, and July 27, 2001, a waiver and amendment on October 19, 2001, and waivers on

December 28, 2001, and January 10, 2002. The June 8, 2001 waiver prohibited the Company from repurchasing its shares and limited its capital expenditures to \$160 million for the period commencing on February 2, 2001, and concluding with the delivery of the restated financial statements. The October 19, 2001, amendment increased the pricing on the synthetic lease with \$212 million in outstanding capital leases and the revolving credit facility from 15 basis points over LIBOR to 102.5 basis points over LIBOR, and accelerated the maturity of the second synthetic lease to September 2002 from June 2004. The Company executed waivers with the lenders under the Indianola, Mississippi and Fulton, Missouri distribution center leases on May 7, 2001, May 11, 2001, June 8, 2001, July 30, 2001, October 31, 2001, December 31, 2001, and January 10, 2002. In addition, the Company executed waivers with the lenders under the Ardmore and South Boston distribution center leases on January 10, 2002, and the lender under the Company's airplane lease on December 21, 2001, and January 7, 2002. The Company paid a total of approximately \$1.6 million in fees for all of the waivers and amendments.

## 8. Earnings per share

Amounts are in thousands except per share data, and shares have been adjusted to give retroactive effect to all common stock splits.

	2000		
	Income	Shares	Per Share Amount
Net income	\$70,642		
-----			
Basic earnings per share			
Income available to common shareholders	70,642	329,741	\$ 0.21
			=====
Stock options		4,117	
-----			
Diluted earnings per share			
Income available to common shareholders plus assumed conversions	\$70,642	333,858	\$ 0.21
			=====
	1999		
	Income	Shares	Per Share Amount
Net income	\$186,673		
Less: preferred stock dividends	1,178		
-----			
Basic earnings per share			
Income available to common shareholders	185,495	302,251	\$ 0.61
			=====
Stock options		6,716	
Convertible preferred stock	1,178	28,937	
-----			
Diluted earnings per share			
Income available to common shareholders plus assumed conversions	\$186,673	337,904	\$ 0.55
			=====

	1998		
	Income	Shares	Per Share Amount
Net income	\$150,934		
Less: preferred stock dividends	3,497		
-----			
Basic earnings per share			
Income available to common shareholders	147,437	276,321	\$ 0.53
			=====
Stock options		8,309	
Convertible preferred stock	3,497	51,133	
-----			
Diluted earnings per share			
Income available to common shareholders plus assumed conversions	\$150,934	335,763	\$ 0.45
			=====

Basic earnings per share was computed by dividing income available to common shareholders by the weighted average number of shares of common stock outstanding during the year. Diluted earnings per share was determined based on the assumption that the convertible preferred stock was converted upon issuance on August 22, 1994, and for the dilutive effect of stock options using the treasury stock method.

Options to purchase shares of common stock that were outstanding at the end of the respective fiscal year (but were not included in the computation of diluted earnings per share because the options' exercise prices were greater than the average market price of the common shares) were 10.2 million, 4.8 million and 1.1 million in 2000, 1999 and 1998, respectively.

## 9. Commitments and contingencies

### Leases

As of February 2, 2001, the Company and certain subsidiaries were committed under capital and operating lease agreements and financing obligations for retail stores, DCs and administrative office space as well as for certain furniture, fixtures and equipment. Most of the stores are operated under operating leases that include renewal options for periods ranging from two to five years and provisions for contingent rentals based upon a percentage of defined sales volume. Certain leases contain restrictive covenants. As of February 2, 2001, the Company was in compliance with such covenants.

In January 1999 and April 1997, the Company sold its DCs located in Ardmore, Oklahoma and South Boston, Virginia, respectively, for 100% cash consideration. Concurrent with the sale transactions, the Company leased the properties back for periods of 25 and 23 years, respectively. The transactions have been recorded as financing obligations rather than sales as a result of, among other things, the lessor's ability to put the properties back to the Company under certain circumstances. The property and equipment, along with the

related lease obligations, associated with these transactions will continue to be recorded in the accompanying financial statements.

Future minimum payments as of February 2, 2001, for capital leases, operating leases and financing obligations, are as follows:

(in thousands)	Capital leases	Financing obligations	Operating leases
2001	\$ 37,938	\$ 9,018	\$ 138,236
2002	409,952	9,283	115,641
2003	11,340	9,283	86,124
2004	11,234	9,283	53,608
2005	7,469	9,283	30,951
Thereafter	12,060	173,778	151,752
	-----	-----	-----
Total minimum payments	489,993	219,928	\$ 576,312
			=====
Less: Imputed interest	(56,894)	(122,926)	
	-----	-----	
Present value of net minimum lease payments	433,099	97,002	
Less: current portion	(7,917)	(1,118)	
	-----	-----	
Long-term portion	\$ 425,182	\$ 95,884	
	=====	=====	

Capitalized leases were discounted at an effective interest rate of approximately 6.8% at February 2, 2001. The gross amount of property and equipment recorded under capital leases or financing obligations at February 2, 2001, and January 28, 2000, were \$506.9 million and \$410.0 million, respectively.

Rent expense under all operating leases was as follows:

(In thousands)	2000	1999	1998
Minimum rentals	\$141,627	\$117,378	\$ 96,520
Contingent rentals	12,584	13,817	13,458
	-----	-----	-----
	\$154,211	\$131,195	\$109,978
	=====	=====	=====

#### Legal proceedings

**Restatement-Related Proceedings.** Following the April 30, 2001, announcement discussed above, more than 20 purported class action lawsuits were filed against the Company and certain current and former officers and directors of the Company, asserting claims under the federal securities laws. These lawsuits have been consolidated into a single action pending in the United States District Court for the Middle District of Tennessee. On July 17, 2001, the court entered an order appointing the Florida State Board of Administration and the Teachers' Retirement System of Louisiana as lead plaintiffs and the law firms of Entwistle & Cappucci LLP, Milberg Weiss Bershad Hynes & Lerach LLP and Grant & Eisenhofer, P.A. as co-lead counsel. On January 3, 2002, the lead plaintiffs filed an amended consolidated class action complaint purporting to name as plaintiffs a class of persons who held or purchased the Company's

securities and related derivative securities between May 12, 1998, and September 21, 2001. Among other things, plaintiffs have alleged that the Company and certain of its current and former officers and directors made misrepresentations concerning the Company's financial results in the Company's filings with the Securities and Exchange Commission and in various press releases and other public statements. The plaintiffs seek damages with interest, costs and such other relief as the court deems proper.

The Company has reached a settlement agreement with the purported class action plaintiffs, pursuant to which the Company has agreed to pay \$140 million to such plaintiffs in settlement for their claims, and to implement certain enhancements to its corporate governance and internal control procedures. Such agreement is subject to confirmatory discovery, to the final approval of the Company's Board of Directors, and to court approval. Following the completion of confirmatory discovery, plaintiffs have the right under the settlement agreement to amend their complaint further to increase the size of the class, and to negotiate with the Company for additional damages, the aggregate amount of all damages to be paid in settlement of plaintiffs' claims not to exceed \$162 million. The Company expects that following the completion of such confirmatory discovery, the plaintiffs will amend their complaint and seek aggregate damages of \$162 million. The Company has accordingly recognized an expense of \$162 million in the fourth quarter of 2000. The Company expects to receive from its insurers approximately \$4.5 million in respect of the class action settlement, which amount has not been accrued in the Company's financial statements.

In addition, six purported shareholder derivative lawsuits have been filed in Tennessee State Court against certain current and former Company directors and officers and Deloitte & Touche LLP, the Company's former independent accountant. The Company is named as a nominal defendant in the actions, which seek restitution and/or compensatory and punitive damages with interest, equitable and/or injunctive relief, costs and such further relief as the court deems proper. By order entered October 31, 2001, the court appointed Michael Dixon, Jr., Carolinas Electrical Workers Retirement Fund and Thomas Dewey, plaintiffs in one of the six filed cases, as lead plaintiffs and the law firms of Branstetter, Kilgore Stranch & Jennings and Stanley, Mandel & Iola as lead counsel. In the same order, the court stayed the remaining cases pending completion of the lead case. Among other things, the plaintiffs allege that certain current and former Company directors and officers breached their fiduciary duties to the Company and that Deloitte & Touche aided and abetted those breaches and was negligent in its service as the Company's independent accountant. During August and September 2001, the Company moved to dismiss all six cases for failure to make a pre-suit demand on the Board of Directors and, in the alternative, requested that the court stay the actions pending the completion of an investigation into the allegations in the complaints by the Shareholder Derivative Claim Review Committee of the Company's Board of Directors. The lead plaintiffs filed an opposition to this motion on October 2, 2001. A hearing on the motion has not yet been scheduled.

Two purported shareholder derivative lawsuits also have been filed in the United States District Court for the Middle District of Tennessee against certain current and former Company directors and officers alleging that they breached their fiduciary duties to the Company. The Company is named as a nominal defendant in these actions, which seek declaratory relief, compensatory and punitive damages, costs and such further relief as the court deems proper. By motion filed on September 28, 2001, the Company requested that the federal court abstain from exercising jurisdiction over the purported shareholder derivative actions in deference to the pending state court actions. By agreement of the parties and court order dated December 3, 2001, the case has been stayed until June 3, 2002.

The Company and the individual defendants have reached a settlement agreement with lead counsel to the plaintiffs in the lead Tennessee state shareholder derivative action. The agreement includes a payment to the Company from a portion of the proceeds of the Company's director and officer liability insurance policies as well as certain corporate governance and internal control enhancements. Pursuant to the terms of such agreement, the Company anticipates that all of the stayed cases, including the federal derivative cases described above, will be dismissed with prejudice by the courts in which they are pending. Such agreement is subject to confirmatory discovery, to the final approval of the Company's Board of Directors, and to court approval. If the settlement agreement is approved, the Company expects that it will result in a net payment to the Company, after attorneys' fees payable to the plaintiffs' counsel, of approximately \$24.8 million, which has not been accrued in the Company's financial statements.

The Company believes that it has substantial defenses to the purported class action and the derivative lawsuits and intends to assert these defenses in the courts in which the actions are pending in the event the settlement agreements referred to above do not successfully resolve these matters. These cases are at an early stage and the amount of potential loss, if any, should the settlement agreements not become effective cannot be reasonably estimated. An unfavorable outcome for the Company in these actions could have a material adverse impact on the Company's financial position and results of operations.

The Company has been notified that the SEC is conducting an investigation into the circumstances that gave rise to the Company's April 30, 2001, announcement. The Company is cooperating with this investigation by providing documents and other information to the SEC.

**Other Litigation.** The Company was involved in other litigation, investigations of a routine nature and various legal matters during 2000, which were, and are being, defended and otherwise handled in the ordinary course of business. While the ultimate results of these matters cannot be determined or predicted, management believes that they have not had and will not have a



material adverse effect on the Company's results of operations or financial position.

#### 10. Employee benefits

Effective January 1, 1998, the Company established a 401(k) savings and retirement plan. All employees who complete 12 months of service, work 1,000 hours, and are at least 21 years of age are eligible to participate in the plan. Employee contributions, up to 6% of annual compensation, are matched by the Company at the rate of \$0.50 on the dollar. The Company also contributes a discretionary amount annually to the plan equal to 2% of each employee's annual compensation. Expense for this plan was approximately \$7.9 million in 2000, \$7.0 million in 1999 and \$5.5 million in 1998.

Effective January 1, 1998, the Company also established a supplemental retirement plan and a compensation deferral plan for a select group of management and highly compensated employees. The supplemental retirement plan is a noncontributory defined contribution plan with annual Company contributions ranging from 2% to 12% of base pay plus bonus depending upon age plus years of service and salary level. Under the compensation deferral plan, participants may defer up to 100% of base pay and 100% of bonus pay. Effective January 1, 2000, both the supplemental retirement plan and compensation deferral plan were amended and restated so that such plans were combined into one master plan document. An employee may be designated for participation in one or both of the plans, according to the eligibility requirements of the plans. Expense for these plans was approximately \$0.1 million in 2000, \$1.1 million in 1999 and \$0.1 million in 1998.

In September 2000, the supplemental retirement plan and compensation deferral plan assets were invested in Company stock and mutual funds as designated by the plan participants and placed in a rabbi trust. The mutual funds are stated at fair market value, which is based on quoted market prices, and are included in other current assets. In accordance with EITF No. 97-14 "Accounting for Deferred Compensation Arrangements Where Amounts Earned Are Held in a Rabbi Trust and Invested," the Company's stock held in the trust is recorded at historical cost and classified as treasury stock. Pursuant to the terms of the plan, a participant's account balance will be paid in cash by (a) lump sum, (b) monthly installments over a 5, 10 or 15 year period or (c) a combination of lump sum and installments. The deferred compensation liability is recorded at the fair value of the investments held in the trust and is included in accrued expenses.

#### 11. Capital stock

In 1994, the Company exchanged 1.7 million shares of Series A Convertible Junior Preferred Stock for the 8.6 million shares of Dollar General common stock owned by C.T.S., Inc., a personal holding company controlled by members of the Turner family, the founders of Dollar General. The Series A

Convertible Junior Preferred Stock was authorized by the Board of Directors out of the authorized but unissued preferred stock approved by the Company's shareholders in 1992. On August 23, 1999, the holders of all of the Company's 1.7 million shares of Series A Convertible Junior Preferred Stock converted their shares to 51.1 million split-adjusted shares of Dollar General Common Stock in accordance with the relevant provisions of the Company's charter. Consequently, preferred stock and treasury stock balances were reduced to zero and Series A Convertible Junior Preferred Stock is no longer outstanding or authorized for issuance.

The Company has a Shareholder Rights Plan (the "Plan") under which Series B Junior Participating Preferred Stock Purchase Rights (the "Rights") were issued for each outstanding share of common stock. The Rights were attached to all common stock outstanding as of March 10, 2000, and will be attached to all additional shares of common stock issued prior to the Plan's expiration on February 28, 2010, or such earlier termination, if applicable. The Rights entitle the holders to purchase from the Company one one-hundredth of a share (a "Unit") of Series B Junior Participating Preferred Stock (the "Preferred Stock"), no par value, at a purchase price of \$100 per Unit, subject to adjustment. Initially, the Rights will attach to all certificates representing shares of outstanding Common Stock, and no separate Rights Certificates will be distributed. The Rights will become exercisable upon the occurrence of a triggering event as defined in the Plan.

The Company has 5 million shares of common stock available for repurchase through August 2002 under its authorized repurchase program.

## 12. Stock incentive plans

The Company has established stock incentive plans under which options to purchase common stock may be granted to executive officers, directors and key employees.

All options granted in 2000, 1999 and 1998 under the 1998 Stock Incentive Plan, the 1995 Employee Stock Incentive Plan, the 1993 Employee Stock Incentive Plan and the 1995 Outside Directors Stock Option Plan, were non-qualified stock options issued at a price equal to the fair market value of the Company's common stock on the date of grant. Non-qualified options granted under these plans have expiration dates no later than 10 years following the date of grant.

Under the plans, grants are made to key management employees ranging from executive officers to store managers and assistant store managers, as well as other employees as prescribed by the Company's Corporate Governance and Compensation Committee of the Board of Directors. The number of options granted and the vesting schedules of those options are directly linked to the employee's performance, Company performance and employee tenure depending on the employee's position within the Company.

The plans also provide for annual grants to non-employee directors according to a non-discretionary formula. The number of shares granted is dependent upon current director compensation levels and the fair market value of the stock on the grant date.

The Company applies APB 25, and related interpretations in accounting for its plans. Under this intrinsic-value based method of accounting, compensation expense is generally not recognized for plans in which the exercise price of the stock options equals the market price of the underlying stock on the date of grant and the number of shares subject to exercise is fixed. Had compensation cost for the Company's stock-based compensation plans been determined based on the fair value at the grant date for awards under these plans consistent with the methodology prescribed under SFAS 123, net income and earnings per share would have been reduced to the pro forma amounts indicated in the following table.

(Amounts in thousands except per share data)	2000	1999	1998
Net income - as reported	\$ 70,642	\$ 186,673	\$ 150,934
Net income - pro forma	\$ 50,805	\$ 164,260	\$ 135,848
Earnings per share - as reported			
Basic	\$ 0.21	\$ 0.61	\$ 0.53
Diluted	\$ 0.21	\$ 0.55	\$ 0.45
Earnings per share - pro forma			
Basic	\$ 0.15	\$ 0.54	\$ 0.48
Diluted	\$ 0.15	\$ 0.49	\$ 0.40

Earnings per share have been adjusted to give retroactive effect to all common stock splits.

The pro forma effects on net income for 2000, 1999 and 1998 are not representative of the pro forma effect on net income in future years because they do not take into consideration pro forma compensation expense related to grants made prior to 1995. The fair value of options granted during 2000, 1999 and 1998 is \$10.76, \$9.26 and \$8.04, respectively.

The fair value of each option grant is estimated on the date of grant using the Black Scholes option pricing model with the following assumptions:

	2000	1999	1998
Expected dividend yield	0.7%	0.7%	0.7%
Expected stock price volatility	49.0%	48.0%	48.0%
Weighted average risk-free interest rate	6.2%	5.3%	5.5%
Expected life of options (years)	6.8	4.5	3.0

The Black-Scholes option model was developed for use in estimating the fair value of traded options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because the Company's employee stock options have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of its employee stock options.

A summary of the balances and activity for all of the Company's stock incentive plans for the last three fiscal years is presented below:

	Shares Under Plans	Weighted Average Exercise Price
Balance, January 30, 1998	25,276,005	\$ 6.65
Granted	6,145,195	15.76
Exercised	(5,717,075)	5.29
Canceled	(2,132,001)	9.85
Balance, January 29, 1999	23,572,124	9.06
Granted	5,968,592	21.24
Exercised	(5,442,217)	6.46
Canceled	(1,432,590)	13.35
Balance, January 28, 2000	22,665,909	12.62
Granted	5,795,360	19.75
Exercised	(4,102,739)	7.17
Canceled	(2,267,402)	17.30
Balance, February 2, 2001	22,091,128	\$ 15.02

The following table summarizes information about stock options outstanding at February 2, 2001:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Number Exercisable	Weighted Exercise Price
\$ 0.73 - \$10.00	5,036,162	4.2	\$ 5.21	3,783,564	\$ 5.69
\$ 10.01 - \$20.00	9,639,233	7.5	15.06	5,200,905	13.81
\$ 20.01 - \$23.90	7,415,733	8.7	21.64	1,123,851	22.30
\$ 0.73 - \$23.90	22,091,128	7.2	\$ 15.02	10,108,320	\$ 11.72

At February 2, 2001, there were approximately 24.7 million shares available for granting of stock options under the Company's stock option plans.

### 13. Segment reporting

The Company manages its business on the basis of one reportable segment. See Note 1 for a brief description of the Company's business. As of February 2, 2001, all of the Company's operations were located within the United States. The following data is presented in accordance with SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information."

(In thousands)	2000	1999	1998
Classes of similar products:			
Net sales:			
Highly consumable	\$2,518,052	\$1,996,454	\$1,364,032
Hardware and seasonal	706,140	640,791	604,485
Basic clothing	554,117	482,390	391,609
Home products	772,262	768,329	860,863
	\$4,550,571	\$3,887,964	\$3,220,989

### 14. Quarterly financial data (unaudited)

The following is selected unaudited quarterly financial data, as previously reported and as restated, for the fiscal years ended February 2, 2001, and January 28, 2000. Amounts are in thousands except per share data. Per share data has been adjusted for all common stock splits. Some of the amounts in the following tables may not foot due to rounding.

#### First Quarter of the year ended February 2, 2001

	As Previously Reported	Restatement Related Adjustments	As Restated
2000:			
Net sales	\$ 997,079	\$ --	\$ 997,079
Gross profit	272,709	(3,302)	269,407
Net income	44,340	(15,005)	29,335
Diluted earnings per share	\$ 0.13	\$ (0.04)	\$ 0.09
Basic earnings per share	\$ 0.13	\$ (0.05)	\$ 0.09

Second Quarter of the year ended February 2, 2001

	As Previously Reported	Restatement Related Adjustments	As Restated
	-----	-----	-----
2000:			
Net sales	\$1,017,418	\$ --	\$ 1,017,418
Gross profit	281,973	2,077	284,050
Net income	39,310	(11,524)	27,786
Diluted earnings per share	\$ 0.12	\$ (0.03)	\$ 0.08
Basic earnings per share	\$ 0.12	\$ (0.04)	\$ 0.08

**Third Quarter of the year ended February 2, 2001**

	As Previously Reported	Restatement Related Adjustments	As Restated
	-----	-----	-----
2000:			
Net sales	\$1,094,360	\$ --	\$ 1,094,360
Gross profit	321,364	(3,020)	318,344
Net income	50,990	(5,314)	45,676
Diluted earnings per share	\$ 0.15	\$ (0.02)	\$ 0.14
Basic earnings per share	\$ 0.15	\$ (0.02)	\$ 0.14

Fourth Quarter of the year ended February 2, 2001 (A)

	As Previously Reported	Restatement Related Adjustments	As Restated
	-----	-----	-----
2000:			
Net sales	\$1,442,654	\$ (940)	\$ 1,441,714
Gross profit	382,339	(3,237)	379,102
Net income	71,379	(103,534)	(32,155)
Diluted earnings per share	\$ 0.21	\$ (0.31)	\$ (0.10)
Basic earnings per share	\$ 0.22	\$ (0.31)	\$ (0.10)

(A) The fourth quarter of the year ended February 2, 2001 contains the markdown described in Note 4, which increased cost of goods sold by \$21.5 million and the litigation settlement expense of \$162.0 million described in Note 9.

**First Quarter of the year ended January 28, 2000**

	As Previously Reported	Restatement Related Adjustments	As Restated
	-----	-----	-----
1999:			
Net sales	\$ 844,593	\$ --	\$ 844,593
Gross profit	225,947	3,249	229,196
Net income	36,348	(4,272)	32,076
Diluted earnings per share	\$ 0.11	\$ (0.01)	\$ 0.10
Basic earnings per share	\$ 0.13	\$ (0.01)	\$ 0.11

**Second Quarter of the year ended January 28, 2000**

	As Previously Reported	Restatement Related Adjustments	As Restated
	-----	-----	-----
1999:			
Net sales	\$ 915,210	\$ --	\$ 915,210
Gross profit	249,582	336	249,918
Net income	41,615	(6,596)	35,019
Diluted earnings per share	\$ 0.12	\$ (0.02)	\$ 0.10
Basic earnings per share	\$ 0.15	\$ (0.02)	\$ 0.12

**Third Quarter of the year ended January 28, 2000**

	As Previously Reported	Restatement Related Adjustments	As Restated
	-----	-----	-----
1999:			
Net sales	\$ 950,419	\$ 0	\$ 950,419
Gross profit	277,857	(2,887)	274,970
Net income	50,859	(7,683)	43,176
Diluted earnings per share	\$ 0.15	\$ (0.02)	\$ 0.13
Basic earnings per share	\$ 0.15	\$ (0.02)	\$ 0.14

**Fourth Quarter of the year ended January 28, 2000**

	As Previously Reported -----	Restatement Related Adjustments -----	As Restated -----
1999:			
Net sales	\$1,177,742	\$ 0	\$1,177,742
Gross profit	344,405	(4,991)	339,414
Net income	90,605	(14,202)	76,403
Diluted earnings per share	\$ 0.27	\$ (0.04)	\$ 0.23
Basic earnings per share	\$ 0.27	\$ (0.04)	\$ 0.23

15. Guarantor subsidiaries

All of the Company's subsidiaries (the "Guarantors") have fully and unconditionally guaranteed on a joint and several basis the Company's obligations under the Notes described in Note 7. Each of the Guarantors is a wholly owned subsidiary of the Company. The Guarantors comprise all of the direct and indirect subsidiaries of the Company. The following consolidating schedules present condensed financial information on a combined basis. Dollar amounts are in thousands.



February 2, 2001

	DOLLAR GENERAL CORPORATION	GUARANTOR SUBSIDIARIES	ELIMINATIONS	CONSOLIDATED TOTAL
BALANCE SHEET DATA:				
ASSETS				
Current assets:				
Cash and cash equivalents	\$ 120,643	\$ 41,667	\$ --	\$ 162,310
Merchandise inventories	--	896,235	--	896,235
Deferred income taxes	6,380	15,134	--	21,514
Other current assets	15,372	606,000	(576,504)	44,868
Total current assets	142,395	1,559,036	(576,504)	1,124,927
Property and equipment, at cost	145,294	1,194,260	--	1,339,554
Less accumulated depreciation and amortization	37,876	328,584	--	366,460
Net property and equipment	107,418	865,676	--	973,094
Merchandise inventories	--	116,000	--	116,000
Deferred income taxes	57,946	--	(5,238)	52,708
Other assets, net	1,707,740	578	(1,692,585)	15,733
Total assets	\$ 2,015,499	\$ 2,541,290	\$(2,274,327)	\$ 2,282,462
LIABILITIES AND SHAREHOLDERS' EQUITY				
Current liabilities:				
Current portion of long-term obligations	\$ 856	\$ 8,179	\$ --	\$ 9,035
Accounts payable	663,373	210,393	(576,504)	297,262
Accrued expenses and other	54,289	159,903	--	214,192
Income taxes	6,875	10,571	--	17,446
Total current liabilities	725,393	389,046	(576,504)	537,935
Long-term obligations	266,343	972,401	(517,980)	720,764
Litigation settlement payable	162,000	--	--	162,000
Deferred income taxes	--	5,238	(5,238)	--
Shareholders' equity:				
Preferred stock	--	--	--	--
Common stock	165,646	23,853	(23,853)	165,646
Additional paid-in capital	283,925	929,677	(929,677)	283,925
Retained earnings	414,318	221,075	(221,075)	414,318
Less common stock purchased by employee deferred compensation trust	863,889	1,174,605	(1,174,605)	863,889
	2,126	--	--	2,126
Total shareholders' equity	861,763	1,174,605	(1,174,605)	861,763
Total liabilities and shareholders' equity	\$ 2,015,499	\$ 2,541,290	\$(2,274,327)	\$ 2,282,462

January 28, 2000

	DOLLAR GENERAL CORPORATION	GUARANTOR SUBSIDIARIES	ELIMINATIONS	CONSOLIDATED TOTAL
BALANCE SHEET DATA:				
ASSETS				
Current assets:				
Cash and cash equivalents	\$ 42,688	\$ 12,054	\$ --	\$ 54,742
Merchandise inventories	--	952,432	--	952,432
Deferred income taxes	4,652	15,834	--	20,486
Other current assets	24,515	842,946	(821,006)	46,455
Total current assets	71,855	1,823,266	(821,006)	1,074,115
Property and equipment, at cost	121,799	987,577	--	1,109,376
Less accumulated depreciation and amortization	26,420	245,567	--	271,987
Net property and equipment	95,379	742,010	--	837,389
Other assets, net	1,744,731	1,262	(1,733,869)	12,124
Total assets	\$ 1,911,965	\$ 2,566,538	\$(2,554,875)	\$ 1,923,628
LIABILITIES AND SHAREHOLDERS' EQUITY				
Current liabilities:				
Current portion of long-term obligations	\$ 1,250	\$ 578	\$ --	\$ 1,828
Accounts payable	949,914	215,690	(821,006)	344,598
Accrued expenses and other	49,698	116,592	--	166,290
Income taxes	4,390	22,601	--	26,991
Total current liabilities	1,005,252	355,461	(821,006)	539,707
Long-term obligations	57,123	824,287	(367,048)	514,362
Deferred income taxes	4,237	19,969	--	24,206
Shareholders' equity:				
Preferred stock	--	--	--	--
Common stock	165,411	23,853	(23,853)	165,411
Additional paid-in capital	229,906	928,804	(928,804)	229,906
Retained earnings	450,036	414,164	(414,164)	450,036
Total shareholders' equity	845,353	1,366,821	(1,366,821)	845,353
Total liabilities and shareholders' equity	\$ 1,911,965	\$ 2,566,538	\$(2,554,875)	\$ 1,923,628

## For the years ended

February 2, 2001

	DOLLAR GENERAL CORPORATION	GUARANTOR SUBSIDIARIES	ELIMINATIONS	CONSOLIDATED TOTAL
STATEMENTS OF INCOME DATA:				
Net sales	\$ 150,932	\$4,550,571	\$ (150,932)	\$4,550,571
Cost of goods sold	--	3,299,668	--	3,299,668
Gross profit	150,932	1,250,903	(150,932)	1,250,903
Selling, general and administrative	101,906	983,925	(150,932)	934,899
Litigation settlement expense	162,000	--	--	162,000
Operating profit (loss)	(112,974)	266,978	--	154,004
Interest expense	18,372	26,985	--	45,357
Income before taxes on income	(131,346)	239,993	--	108,647
Provisions for taxes on income	(51,562)	89,567	--	38,005
Equity in subsidiaries' earnings, net of taxes	150,426	--	(150,426)	--
Net income	\$ 70,642	150,426	\$ (150,426)	\$ 70,642

January 28, 2000

	DOLLAR GENERAL CORPORATION	GUARANTOR SUBSIDIARIES	ELIMINATIONS	CONSOLIDATED TOTAL
STATEMENTS OF INCOME DATA:				
Net sales	\$ 177,960	\$3,887,964	\$ (177,960)	\$3,887,964
Cost of goods sold	--	2,794,466	--	2,794,466
Gross profit	177,960	1,093,498	(177,960)	1,093,498
Selling, general and administrative	103,673	847,215	(177,960)	772,928
Operating profit	74,287	246,283	--	320,570
Interest expense	9,324	16,549	--	25,873
Income before taxes on income	64,963	229,734	--	294,697
Provisions for taxes on income	23,809	84,215	--	108,024
Equity in subsidiaries' earnings, net of taxes	145,519	--	(145,519)	--
Net income	\$ 186,673	\$ 145,519	\$ (145,519)	\$ 186,673

January 29, 1999

	DOLLAR GENERAL CORPORATION	GUARANTOR SUBSIDIARIES	ELIMINATIONS	CONSOLIDATED TOTAL
STATEMENTS OF INCOME				
DATA:				
Net sales	\$ 189,088	\$3,220,989	\$ (189,088)	\$3,220,989
Cost of goods sold	--	2,328,470	--	2,328,470
Gross profit	189,088	892,519	(189,088)	892,519
Selling, general and administrative	101,889	726,733	(189,088)	639,534
Operating profit	87,199	165,786	--	252,985
Interest expense	9,236	4,740	--	13,976
Income before taxes on income	77,963	161,046	--	239,009
Provisions for taxes on income	28,729	59,346	--	88,075
Equity in subsidiaries' earnings, net of taxes	101,700	--	(101,700)	--
Net income	\$ 150,934	\$ 101,700	\$ (101,700)	\$ 150,934

For the years ended

February 2, 2001

	DOLLAR GENERAL CORPORATION	GUARANTOR SUBSIDIARIES	ELIMINATIONS	CONSOLIDATED TOTAL
STATEMENTS OF CASH FLOWS				
DATA:				
Cash flows from operating activities:				
Net income	\$ 70,642	\$ 150,426	\$(150,426)	\$ 70,642
Adjustments to reconcile net income to net cash provided by / (used in) operating activities:				
Depreciation and amortization	13,144	98,255	--	111,399
Deferred income taxes	(63,911)	(14,031)	--	(77,942)
Tax benefit from stock option exercises	19,018	--	--	19,018
Litigation settlement	162,000	--	--	162,000
Change in operating assets and liabilities:				
Merchandise inventories	--	(59,803)	--	(59,803)
Other current assets	12,206	236,946	(244,502)	4,650
Accounts payable	(286,541)	(5,297)	244,502	(47,336)
Accrued expenses and other	4,562	34,829	--	39,391
Income taxes	2,485	(12,030)	--	(9,545)
Other	(154,550)	7,155	150,426	3,031
Net cash provided by / (used in) operating activities	(220,945)	436,450	--	215,505
Cash flows from investing activities:				
Purchase of property and equipment	(15,035)	(201,549)	--	(216,584)
Proceeds from sale of property and equipment	165	97,447	--	97,612
Issuance of long-term notes receivable	(150,932)	--	150,932	--
Receipt of dividends	343,515	--	(343,515)	--
Contribution of capital	(873)	--	873	--
Net cash used in investing activities	176,840	(104,102)	(191,710)	(118,972)

Cash flows from financing activities:				
Issuance of short-term borrowings	220,000	--	--	220,000
Repayments of short-term borrowings	(220,000)	--	--	(220,000)
Issuance of long-term obligations	199,595	150,932	(150,932)	199,595
Repayments of long-term obligations	(1,251)	(111,025)	--	(112,276)
Payment of cash dividends	(42,237)	(343,515)	343,515	(42,237)
Proceeds from exercise of stock options	34,130	--	--	34,130
Repurchase of common stock, net	(62,988)	--	--	(62,988)
Issuance of common stock, net	--	873	(873)	--
Purchase of common stock by employee deferred compensation trust	(2,126)	--	--	(2,126)
Settlement of derivative financial instruments	(3,063)	--	--	(3,063)
-----				
Net cash provided by / (used in) financing activities	122,060	(302,735)	191,710	11,035
-----				
Net increase in cash and cash equivalents	77,955	29,613	--	107,568
Cash and cash equivalents, beginning of year	42,688	12,054	--	54,742
-----				
Cash and cash equivalents, end of year	\$ 120,643	\$ 41,667	\$ --	\$ 162,310
=====				

January 28, 2000

	DOLLAR GENERAL CORPORATION	GUARANTOR SUBSIDIARIES	ELIMINATIONS	CONSOLIDATED TOTAL
STATEMENTS OF CASH FLOWS DATA:				
Cash flows from operating activities:				
Net income	\$ 186,673	\$ 145,519	\$(145,519)	\$ 186,673
Adjustments to reconcile net income to net cash provided by / (used in) operating activities:				
Depreciation and amortization	8,445	71,262	--	79,707
Deferred income taxes	(20)	(2,241)	--	(2,261)
Tax benefit from stock option exercises	30,287	--	--	30,287
Change in operating assets and liabilities:				
Merchandise inventories	--	(158,836)	--	(158,836)
Other current assets	(19,847)	(416,626)	421,122	(15,351)
Accounts payable	424,770	74,354	(421,122)	78,002
Accrued expenses and other	13,129	(15,273)	--	(2,144)
Income taxes	2,072	2,053	--	4,125
Other	(149,396)	397	145,519	(3,480)
-----				
Net cash provided by / (used in) operating activities	496,113	(299,391)	--	196,722
-----				
Cash flows from investing activities:				
Purchase of property and equipment	(24,624)	(117,446)	--	(142,070)
Proceeds from sale of property and equipment	335	2,716	--	3,051
Issuance of long-term notes receivable	(177,960)	--	177,960	--
Contribution of capital	(207,476)	--	207,476	--
-----				
Net cash used in investing activities	(409,725)	(114,730)	385,436	(139,019)
-----				
Cash flows from financing activities:				
Issuance of short-term borrowings	295,324	--	--	295,324
Repayments of short-term borrowings	(295,324)	--	--	(295,324)
Issuance of long-term obligations	2,351	198,457	(177,960)	22,848
Repayments of long-term obligations	(2,182)	(5,523)	--	(7,705)
Payment of cash dividends	(33,791)	--	--	(33,791)
Proceeds from exercise of stock options	38,797	--	--	38,797
Repurchase of common stock, net	(50,753)	--	--	(50,753)
Issuance of common stock, net	--	207,476	(207,476)	--
-----				
Net cash provided by / (used in) financing activities	(45,578)	400,410	(385,436)	(30,604)
-----				
Net increase / (decrease) in cash and cash equivalents	40,810	(13,711)	--	27,099
Cash and cash equivalents, beginning of year	1,878	25,765	--	27,643
-----				
Cash and cash equivalents, end of year	\$ 42,688	\$ 12,054	\$ --	\$ 54,742
=====				

January 29, 1999

	DOLLAR GENERAL CORPORATION	GUARANTOR SUBSIDIARIES	ELIMINATIONS	CONSOLIDATED TOTAL
STATEMENTS OF CASH FLOWS DATA:				
Cash flows from operating activities:				
Net income	\$ 150,934	\$ 101,700	\$(101,700)	\$ 150,934
Adjustments to reconcile net income to net cash Provided by / (used in) operating activities:				
Depreciation and amortization	5,063	52,351	--	57,414
Deferred income taxes	(825)	(3,064)	--	(3,889)
Tax benefit from stock option exercises	32,252	--	--	32,252
Change in operating assets and liabilities:				
Merchandise inventories	--	(171,239)	--	(171,239)
Other current assets	242,095	(411,357)	158,032	(11,230)
Accounts payable	525,144	(280,489)	(158,032)	86,623
Accrued expenses and other	13,857	1,074	--	14,931
Income taxes	342	20,298	--	20,640
Other	(103,840)	(605)	101,700	(2,745)
Net cash provided by / (used in) operating activities	865,022	(691,331)	--	173,691
Cash flows from investing activities:				
Purchase of property and equipment	(8,439)	(134,943)	--	(143,382)
Proceeds from sale of property and equipment	80	142	--	222
Issuance of long-term notes receivable	(64,520)	(822)	65,342	--
Contribution of capital	(698,768)	--	698,768	--
Net cash used in investing activities	(771,647)	(135,623)	764,110	(143,160)
Cash flows from financing activities:				
Issuance of short-term borrowings	165,000	--	--	165,000
Repayments of short-term borrowings	(186,933)	--	--	(186,933)
Issuance of long-term obligations	1,324	136,275	(65,342)	72,257
Repayments of long-term obligations	(2,667)	--	--	(2,667)
Payment of cash dividends	(26,661)	--	--	(26,661)
Proceeds from exercise of stock options	30,727	--	--	30,727
Repurchase of common stock, net	(73,236)	--	--	(73,236)
Issuance of common stock, net	--	698,768	(698,768)	--
Transfer to ESOP	755	--	--	755
Net cash provided by / (used in) financing activities	(91,691)	835,043	(764,110)	(20,758)
Net increase in cash and cash equivalents	1,684	8,089	--	9,773
Cash and cash equivalents, beginning of year	194	17,676	--	17,870
Cash and cash equivalents, end of year	\$ 1,878	\$ 25,765	\$ --	\$ 27,643

## INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Shareholders of Dollar General Corporation  
Goodlettsville, Tennessee

We have audited the accompanying consolidated balance sheets of Dollar General Corporation and subsidiaries as of February 2, 2001 and January 28, 2000, and the related consolidated statements of income, shareholders' equity, and cash flows for each of the three years in the period ended February 2, 2001. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Dollar General Corporation and subsidiaries as of February 2, 2001 and January 28, 2000, and the consolidated results of their operations and their cash flows for each of the three years in the period ended February 2, 2001, in conformity with accounting principles generally accepted in the United States.

As discussed in Note 2 to the consolidated financial statements, the accompanying consolidated balance sheet as of January 28, 2000 and the related consolidated statements of income, shareholders' equity and cash flows for the years ended January 28, 2000 and January 29, 1999, have been restated.

*/s/ Ernst & Young LLP*  
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*Ernst & Young LLP*

*Nashville, Tennessee*  
*January 11, 2002*

**ITEM 9.**

**CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS AND FINANCIAL DISCLOSURE**

Not Applicable.

**PART III**

**ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**

**Board of Directors**

The members of the Company's Board of Directors as of December 14, 2001, are:

Name	Age	Director Since
-----	----	-----
Dennis C. Bottorff	57	1998
Barbara L. Bowles	54	2000
James L. Clayton	67	1988
Reginald D. Dickson	55	1993
E. Gordon Gee	57	2000
John B. Holland	69	1988
Barbara M. Knuckles	53	1995
Cal Turner	61	1966
David M. Wilds	61	1991
William S. Wire, II	69	1989

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The following is a summary of the business experience of the Company's Directors:

Mr. Bottorff currently serves as Chairman of Council Capital Management, Inc., which position he has held since January 2001. He previously served as Chairman of AmSouth Bancorporation, a bank holding company, and prior to that, as President and Chief Executive Officer of First American Corporation from 1991 to 1999. He was also First American's Chairman from 1995 to 1999. Mr. Bottorff is a director of Ingram Industries, a privately-held provider of wholesale distribution, inland marine transportation and insurance services. He also serves as a director of Memx, Inc., an optical systems component manufacturer.

Ms. Bowles currently serves as President of The Kenwood Group, an equity investment advisory firm that she founded in 1989. She also founded The Kenwood Growth and Income Fund in 1996. She previously served as Vice President of Kraft, Inc. from 1984 to 1989. Ms. Bowles is a director of Black & Decker Corporation, Wisconsin Energy Corporation, Georgia Pacific Corp., and the Chicago Urban League. She is also a trustee of Fisk University.



Mr. Clayton has served as Chairman of Clayton Homes, Inc. since 1956 and also served as its Chief Executive Officer from 1956 to 1999. Clayton Homes, Inc. manufactures, sells, finances and insures manufactured homes. Mr. Clayton is Chairman and Chief Executive Officer of FSB Bank Shares, Inc., a bank holding company, and is a Director and Regional Chairman of Branch Banking and Trust Co. Additionally, Mr. Clayton is a director of Chateau Communities, Inc., a manufactured housing property management real estate investment trust.

Mr. Dickson has served as Chairman of Buford, Dickson, Harper & Sparrow, Inc., Investment Advisors, and President Emeritus of Inroads, Inc., a non-profit organization supporting minority education since 1996. Mr. Dickson served as President and Chief Executive Officer of Inroads, Inc. from 1983 to 1993.

Dr. Gee has served as Chancellor of Vanderbilt University since 2000. He previously served as President of Brown University from 1998 until 2000. Prior to that, Dr. Gee served as President of The Ohio State University from 1990 until 1998. Dr. Gee is a director of The Limited, Inc., Intimate Brands, Inc., Allmerica Financial Corp., Hasbro, Inc., and Massey Energy, Inc.

Mr. Holland served as President and Chief Operating Officer of Fruit of the Loom, Inc., a manufacturer of underwear and other soft goods, from 1985 until his retirement in February 1996, at which time he became a consultant to that corporation. In 1999, Mr. Holland returned to Fruit of the Loom as a director and Executive Vice President, Operations. Fruit of the Loom filed a petition for bankruptcy on December 29, 1999. Mr. Holland also serves as President of Dunree Capital, Inc.

Ms. Knuckles has served as Director of Development and Corporate Relations for North Central College in Naperville, Illinois since 1992. From 1988 to 1992, Ms. Knuckles was a private investor managing several family businesses. She serves as a member of the board of directors of J. R. Short Milling Company, a privately-held specialty corn-milling company, and Harris Bank of Naperville, Illinois.

Mr. Turner is the Chairman and Chief Executive Officer of the Company. He joined the Company in 1965 and has held the office of Chief Executive Officer since 1977. Mr. Turner became Chairman of the Board in 1989 and President in 1977.

Mr. Wilds currently serves as Managing Partner of 1st Avenue Partners, L.P., a private equity partnership, which position he has held since 1998. From 1995 to 1998, Mr. Wilds was President of Nelson Capital Partners III, L.P., a merchant banking company. From 1990 to 1995, Mr. Wilds served as Chairman of the Board of Cumberland Health Systems, Inc., an owner and operator of psychiatric hospitals.

Mr. Wire served from 1986 until his retirement in 1994 as Chairman of the Board of Genesco, Inc., a manufacturer, wholesaler and retailer of footwear and clothing. Mr. Wire served as Chief Executive Officer of Genesco, Inc. from 1986 to 1993. Mr. Wire is a director of Genesco, Inc. and American Endoscopy Services, Inc.

## Executive Officers

The Company's executive officers as of December 14, 2001, are:

Name	Age	Position	Executive Officer Since
Cal Turner	61	Chairman and Chief Executive Officer	1966
Donald S. Shaffer	58	President and Chief Operating Officer	2001
Bruce Ash	52	Vice President, Information & Administrative Services	1999
Melissa Buffington	43	Vice President and Chief Administrative Officer	1999
Jim Hagan	42	Executive Vice President and Chief Financial Officer	2001
Tom Hartshorn	50	Executive Vice President, Merchandising	1992
Bob Layne	35	Vice President Merchandising Support	2001
Stonie O'Briant	46	Executive Vice President, Operations	1995
Robert A. Lewis	40	Vice President, Controller	2001
Jeff Sims	50	Vice President, Distribution	1999
Bob Warner	51	Vice President, General Merchandising Manager	1998

All executive officers of the Company serve at the pleasure of the Board of Directors. Messrs. Turner, Hartshorn and O'Briant have been employed by the Company as executive officers for more than the past five years.

The following is a brief summary of the business experience of the executive officers:

Mr. Turner joined the Company in 1965 and was elected President and Chief Executive Officer in 1977. Mr. Turner has served as Chairman of the Board and Chief Executive Officer since January 1989.

Mr. Shaffer joined the Company as President and Chief Operating Officer in May 2001. From 2000 to 2001, Mr. Shaffer served as President and Chief Executive Officer of Heilig-Meyers Company, a retailer of home furnishings and bedding, and as its President and Chief Operating Officer from 1999 to 2000. Heilig-Meyers Company filed a petition for bankruptcy on August 16, 2000. From 1997 to 1998, Mr. Shaffer served as Chairman and Chief Executive Officer of Western Auto Supply Company, a wholesaler of automotive parts and a subsidiary of Sears, Roebuck and Co. From 1994 to 1996, Mr. Shaffer served as President and Chief Executive Officer of Sears Canada Inc., a retailer of general merchandise and a majority-owned subsidiary of Sears, Roebuck and Co.

Mr. Ash joined the Company as Vice President, Information Services in September 1999. Before joining the Company, Mr. Ash served as Senior Vice President of Systems at Talbot's, a retailing company, for 10 years.

Ms. Buffington was named Vice President and Chief Administrative Officer in February 2001. She joined the Company as Vice President, Human Resources in November 1999. Before joining the Company, Ms. Buffington served as Executive Vice President, Human Resources of First American Corporation, a bank holding company. Ms. Buffington joined First American in 1992 as Vice President, Strategic Planning.

Mr. Hagan joined the Company as Executive Vice President and Chief Financial Officer in March 2001. From June 2000 through March 2001, Mr. Hagan served as Chief Financial Officer of Central Parking Corporation, a provider of parking and transportation management services. From April 1999 through June 2000, Mr. Hagan served as Executive Vice President and Chief Financial Officer of Saturn Retail Enterprises, an owner/operator of Saturn automobile dealerships and a wholly owned indirect subsidiary of General Motors Corporation. He served as Executive Vice President and Chief Financial Officer of Bruno's Inc., a supermarket operator, from May 1996 through April 1999, which company filed a petition for bankruptcy in January of 1998. Mr. Hagan also previously served as Executive Vice President and Chief Financial Officer of Revco D.S., Inc.

Mr. Hartshorn was named Executive Vice President, Merchandising in February 2001. Since February 2000, he served as Senior Vice President, Logistics and Merchandising Operations. He joined the Company as Vice President, Operations in 1992 and was named Vice President, Merchandising Operations in 1993. Before joining the Company, he was director of store operations for McCrory/TG&Y, a retailing company, where he held various management positions in operations since 1968.

Mr. Layne was named Vice President, Merchandising Support in February 2001. He joined the Company in 1985 and served various positions including staff attorney, senior director of administration and most recently, Corporate Secretary.

Mr. O'Briant was named Executive Vice President, Operations in February 2001. Since February 2000, he served as Executive Vice President, Merchandising. Mr. O'Briant joined the Company in 1991 as Hardlines Merchandise Manager, was named General Merchandise Manager in 1992, Vice President, Merchandising in 1995, and Senior Vice President, Merchandising in 1998. Before joining Dollar General, Mr. O'Briant had 17 years of service with Fred's, Inc., a discount retailer, where he served in a number of executive management positions including Vice President, Hardlines, Vice President, Softlines and Vice President, Household Products.

Mr. Lewis joined the Company as Vice President, Controller in October, 2001. From May 1999 through September 2001, Mr. Lewis served as Group Vice President, overseeing operational, planning and administrative functions for Lux Corp., an apparel retailer doing business as "Mr. Rags" and a wholly owned subsidiary of Claire's Stores, Inc. Mr. Lewis served as Vice President of Finance from 1996 until May 1999, and as Controller from November 1988 until May 1999, for Claire's Stores, Inc., a retailer of popular-priced fashion accessories and apparel.

Mr. Sims was named Vice President, Distribution in March 1999. Before joining the Company, Mr. Sims served with Hills Department Stores, a mass merchandising company, in various management positions including Senior Vice President, Logistics from 1997 to 1999. From 1995 to 1996, Mr. Sims served as Vice President, Logistics for Thorn Services International, a rent-to-own services company. From 1992 to 1994, Mr. Sims served as Vice President, Logistics for Lesco, Inc., a manufacturer and distributor of industrial products.

Mr. Warner was named Vice President, General Merchandising Manager in November 1998. Mr. Warner joined the Company in 1989 as a hardware buyer. Mr. Warner has held various management positions with the Company including Hardlines Divisional Merchandise Manager, Director of Products and Processes and General Merchandise Manager.

#### Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the 1934 Act and the disclosure requirements of Item 405 of Regulation S-K of the Rules and Regulations of the SEC require the Company's executive officers and directors, and any person who owns more than 10 percent of a registered class of the Company's equity securities, to file reports of ownership and changes in ownership on Forms 3, 4 and 5 with the SEC, the applicable market or exchange upon which the Company's shares are listed and the Company. Based solely on the Company's review of copies of such forms it

has received and based on written representations from certain reporting persons that they were not required to file Forms 5 for specified fiscal years, the Company believes that all its officers, directors and greater-than-ten-percent beneficial owners complied with all filing requirements applicable to them with respect to transactions during the Company's 2000 fiscal year.

## **ITEM 11. EXECUTIVE COMPENSATION**

### **Summary Compensation Table**

The following table provides information as to annual, long-term or other compensation paid or accrued during 2000, 1999 and 1998, for the CEO and the persons who, at the end of 2000, were the other four most highly-compensated executive officers of the Company (collectively, the "Named Executive Officers") or those who are otherwise required to be included in this table.

Name and Principal Position	Year	Annual Compensation			Long-term Compensation Awards		
		Salary (\$)	Bonus (\$)	Other Annual Compensation (\$)(1)	Restricted Stock Awards (\$)	Securities Underlying Options (#)(2)	All Other Compensation(3)
Cal Turner, Jr., Chairman and Chief Executive Officer	2000	775,029	356,500	22,080	0	205,168	166,084
	1999	766,667	485,750	12,866	0	205,995	156,782
	1998	704,167	528,000	8,153	0	209,608	151,410
Brian Burr, Executive Vice President and Chief Financial Officer(4)	2000	333,346	149,500	56,444	0	66,061	26,843
	1999	320,833	88,500	16,704	0	88,375	19,951
	1998	137,500	0	0	0	180,541	0
Bob Carpenter, President and Chief Operating Officer(5)	2000	337,512	126,500	19,049	0	164,555	51,551
	1999	270,833	147,500	13,664	0	74,159	39,219
	1998	230,833	138,000	8,738	0	67,430	32,150
Tom Hartshorn, Executive Vice President, Merchandising	2000	201,674	85,100	3,584	0	96,340	21,785
	1999	181,249	100,300	4,081	0	48,750	7,731
	1998	167,083	110,400	3,502	0	48,961	4,177
Stonie O'Briant, Executive Vice President, Operations	2000	245,842	103,500	5,758	0	66,061	21,139
	1999	219,167	112,100	4,059	0	74,159	19,995
	1998	186,667	117,300	2,525	0	135,975	18,404
Earl Weissert Executive Vice President, Operations(6)	2000	297,510	170,000	23,463	0	66,061	32,270
	1999	201,875	0	93,467	0	121,229	0
	1998	0	0	0	0	0	0

### Options Granted in Last Fiscal Year

The following table provides information as to options granted to the Named Executive Officers during 2000. The Company granted no Stock Appreciation Rights in 2000, and no Named Executive Officer holds any Stock Appreciation Rights.

(1) The amounts reported in this column include gross-ups for tax reimbursements and \$42,831 reimbursed to Mr. Burr for relocation expenses in 2000.

(2) Includes options granted under the Stock Plus program, which awards grants to key employees who maintain a specified level of stock ownership, as well as options granted under the Stock Incentive Program which are tied to employee and company performance. All share amounts have been adjusted to reflect all common stock splits as of the date of this report.

(3) Includes contributions to retirement and deferred compensation plans in 2000, 1999 and 1998.

(4) Mr. Burr left the Company in February 2001.

(5) Mr. Carpenter retired effective as of October 1, 2001.

(6) Mr. Weissert left the Company in January 2001.

Name	Number of Securities Underlying Options Granted (#)(7 )	% of Total Options Granted to Employees In 2000 (%)	Exercise or Base Price (\$/Share)	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
					5% (\$)	10% (\$)
----- Individual Grants -----						
Cal Turner, Jr.	109,425	3.54	\$ 21.25	4/4/2010	1,462,357	3,705,899
	54,712		\$ 21.25	4/4/2010	731,172	1,852,933
	41,031		\$ 17.31	6/5/2010	446,670	1,131,950
Brian Burr	33,593	1.14	\$ 21.25	4/4/2010	448,937	1,137,695
	16,793		\$ 21.25	4/4/2010	224,422	568,729
	15,675		\$ 17.31	6/5/2010	170,641	432,437
Bob Carpenter	25,713	2.84	\$ 14.65	2/21/2010	236,902	600,356
	12,861		\$ 14.65	2/21/2010	118,492	300,283
	19,040		\$ 14.65	2/21/2010	175,421	444,552
	9,523		\$ 14.65	2/21/2010	87,738	222,346
	74,125		\$ 21.25	4/4/2010	990,607	2,510,393
	23,293		\$ 17.31	6/5/2010	253,571	642,600
Tom Hartshorn	9,852	1.66	\$ 14.65	2/21/2010	90,769	230,028
	4,921		\$ 14.65	2/21/2010	45,339	114,897
	13,553		\$ 14.65	2/21/2010	124,868	316,440
	6,772		\$ 14.65	2/21/2010	62,393	158,115
	33,593		\$ 21.25	4/4/2010	448,937	1,137,695
	16,793		\$ 21.25	4/4/2010	224,422	568,729
	10,856		\$ 17.31	6/5/2010	118,180	299,492
Stonie O'Briant	33,593	1.14	\$ 21.25	4/4/2010	448,937	1,137,695
	16,793		\$ 21.25	4/4/2010	224,422	568,729
	15,675		\$ 17.31	6/5/2010	170,641	432,437
Earl Weissert	33,593	1.14	\$ 21.25	4/4/2010	448,937	1,137,695
	16,793		\$ 21.25	4/4/2010	224,422	568,729
	15,675		\$ 17.31	6/5/2010	170,641	432,437

(1) Options granted under the Stock Incentive Program will vest nine and one-half years from the date of grant. These options may vest on an accelerated basis upon the attainment of individual and Company performance goals. Each Named Executive Officer met Company stock ownership requirements to receive additional grants under the Stock Plus Program. Option grants for each Named Executive Officer are listed in the following order: (1) Stock Incentive Program grants which for purposes of accelerated vesting are tied to earnings goal one, (2) Stock Incentive Program grants which for purposes of accelerated vesting are tied to earnings goal two and (3) Stock Plus Program grants. All share amounts and prices have been adjusted to reflect all common stock splits as of the date of this report.

## Aggregated Option Exercises in the Last Fiscal Year and Year-End Values

The following table provides information as to options exercised or held by the Named Executive Officers during 2000.

Name	Shares Acquired on Exercise (#)	Value Realized (\$)(1)	Number of Securities Underlying Unexercised Options at Fiscal Year End		Value of Unexercised In-the-Money Options at Fiscal Year-End (\$)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Cal Turner, Jr.	357,621	2,443,516	41,200	864,542	0	4,739,865
Brian Burr	0	0	142,160	192,813	244,839	138,135
Bob Carpenter	0	0	398,000	377,354	4,549,116	1,803,830
Tom Hartshorn	50,000	870,975	388,814	246,879	4,710,304	1,232,515
Stonie O'Briant	142,712	2,100,002	172,916	255,250	814,101	1,015,369
Earl Weissert	0	0	18,750	0	0	0

### Employee Retirement Plan

The Dollar General Corporation 401(k) Savings and Retirement Plan (the "401(k) Plan") became effective on January 1, 1998. Balances in two earlier plans were transferred into the 401(k) Plan.

The Company makes a discretionary annual contribution, which has generally been equal to 2% of each eligible employee's compensation. Seventy-five percent of this contribution will be made in cash, while the remaining twenty-five percent will be contributed in the Company's Common Stock. Eligible employees are not required to make any additional contributions in order to receive this contribution from the Company. However, participants may elect to contribute between 1% and 15% of their annual salary, up to a maximum annual contribution of \$10,500. The Company will match fifty percent of employee contributions, up to 6% of annual salary.

(1) Market value of underlying securities at exercise, minus the exercise price.



The 401(k) Plan covers substantially all employees, including the Named Executive Officers, subject to certain eligibility requirements. The 401(k) Plan is subject to the Employee Retirement and Income Security Act ("ERISA").

A participant's right to claim a distribution of his or her account balance is dependent on ERISA guidelines, Internal Revenue Service regulations and the vesting schedule below:

Employee Contributions	Immediately Vested	
Dollar General Discretionary Contribution (2%)	Immediately Vested	
Employer Matching Contribution	At the end of the 1st - 3rd Years	0% Vested
	At the end of the 4th Year	40% Vested
	At the end of the 5th Year	100% Vested

As of February 2, 2001, Messrs. Turner, Carpenter, Burr, O'Briant, Hartshorn and Weissert had 35, 19, 2, 9, 9 and 1 years of credited service, respectively. The estimated present value of benefits under the plan as of January 1, 2001, was \$723,768 for Cal Turner, Jr.; \$343,971 for Bob Carpenter; \$200,117 for Brian Burr; \$125,709 for Stonie O'Briant; \$122,817 for Tom Hartshorn; and \$12,592 for Earl Weissert. Upon retirement, each participant has the option of taking a lump sum or an average annual payment over a 10-year period.

**Other Executive Benefits**

The Company offers the Supplemental Executive Retirement Plan (the "SERP") and Compensation Deferral Plan (the "CDP") to certain key employees who are determined to be eligible by the CGC Committee. Pursuant to the CDP, participants make annual elections to defer up to 100% of base pay, reduced by any deferrals to the qualified plan, and up to 100% of bonus. All participants are 100% vested for all compensation deferrals. Pursuant to the SERP, the Company makes an annual contribution to all participants who are actively employed on December 31. The contribution percentage is based on age plus service where:

Age plus Service	Percent of Base plus Bonus	
-----	Non-Officer	Officers
	-----	-----
<40	2.0%	3.0%
40-59	3.0%	4.5%
60-79	5.0%	7.5%
80 or more	8.0%	12.0%

Participants have actual investment funds to choose from which mirror the investment options available in the 401(k) Plan. The SERP is

non-qualified and is, therefore, not subject to certain requirements under ERISA. The estimated present value of benefits under the SERP and CDP as of January 1, 2001, was \$4,528,108 for Cal Turner, Jr.; \$668,307 for Bob Carpenter; \$165,393 for Brian Burr; \$332,748 for Stonie O'Briant; \$117,815 for Tom Hartshorn; and \$44,224 for Earl Weissert.

### **Compensation of Directors**

Directors receive a \$5,000 quarterly retainer plus \$1,250 for attending each regular meeting of the Board of Directors or any committee thereof. Committee chairpersons receive an additional \$250 for each committee meeting attended. Compensation for telephonic meetings is one-half the above rates. Directors who are officers of the Company do not receive any separate compensation for attending Board or committee meetings. In addition, the directors who are not employees of the Company are entitled to receive nonqualified options for the purchase of Common Stock pursuant to the Company's 1998 Stock Incentive Plan.

A non-employee director may defer all or a part of any fees normally paid by the Company to the director pursuant to a voluntary nonqualified compensation deferral plan. The compensation eligible for deferral includes the annual retainer, meeting and other fees, as well as any per diem compensation for special assignments, earned by a director for his or her service to the Board or one of its committees. The compensation deferred is credited to a liability account, which is then invested at the option of the director, in either an account which mirrors the performance of a fund selected by the CGC Committee, or in a phantom stock account which mirrors the performance of the Common Stock. In accordance with a director's election made at the time of the deferral, the deferred compensation will be paid in a lump sum or in annual installments, or a combination of both upon a director's resignation or termination from the Board. All deferred compensation will be immediately due and payable upon a "change in control" (as defined in the deferred compensation plan) of the Company.

### **Compensation Committee Interlocks and Insider Participation**

During 2000, the Executive Compensation and Corporate Governance Committee of the Board of Directors (the "CGC Committee") was comprised of Messrs. Bottorff, Gee, Wilds and Wire. None of these persons has at any time been an officer or employee of the Company or any subsidiary of the Company during 2000. No executive officer of the Company served as a member of a compensation committee or as a director of any entity of which any of the Company's directors served as an executive officer.

The Executive Compensation and Corporate Governance Committee prepared the following executive compensation report:

What is the Company's compensation philosophy?

The Company has adopted the concept of pay-for-performance, linking management compensation, Company performance and shareholder return. This strategy reflects the Company's desire to reward results that are consistent with the key goals of the Company and its shareholders. The CGC Committee and the Company believe that combining the variable, direct and indirect pay components of the Company's compensation program enables the Company to attract, retain and motivate result-oriented employees to achieve higher levels of performance.

What is the Company's variable compensation philosophy?

At nearly all levels of the Company, a significant portion of pay is variable, being contingent upon Company (or store unit) performance. The performance-based component, whether annual or long-term incentive, is significant enough to serve as a strong incentive for excellent performance. Additionally, performance-based compensation, through the grants of stock options to employees, serves to increase employee ownership of the Company.

What is the Company's direct compensation philosophy?

Though performance-based compensation is emphasized, base pay is competitive. The Company believes base pay should relate to the skills required to perform a job and to the value of each job performed relative to the industry, the market and the job's strategic importance to the Company. This method of valuation allows the Company to respond to changes in its employment needs and changes in the labor market. Increases in base pay require a satisfactory or better level of performance as approved by the CGC Committee.

What is the Company's indirect compensation philosophy?

The Company's indirect compensation programs are intended to protect employees from extreme financial hardship in the event of a catastrophic illness or injury and to provide limited income security for retirement years. The Company believes that its health, life and disability benefit programs should provide competitive levels of protection without jeopardizing the Company's position as a low-cost retailer. The Company manages health-care costs aggressively and enlists employee assistance in cost management. Employees have

various opportunities to share in health-care cost reductions and are encouraged to adopt healthy lifestyles.

The Company believes its retirement plans should provide limited income security at retirement for the typical employee. Employees are also invited to share in ownership of the Company through participation in the Dollar General Direct Stock Purchase Plan and the Dollar General Corporation 401(k) Savings and Retirement Plan.

How are the Company's officers compensated?

Under the supervision of the CGC Committee, the Company has developed compensation policies and programs designed to provide competitive levels of compensation that integrate pay with the Company's annual and long-term performance goals. The Company is committed to creating an incentive for its employees that encourages a team approach to accomplish corporate objectives and to create value for shareholders.

The executive officers' compensation for 2000 reflected the Company's increasing emphasis on tying pay to both short-term and long-term incentives. The short-term incentive is an annual cash bonus that is based on company performance and linked to a percentage of the executive officer's salary. The long-term incentives are performance-accelerated stock options. Incentive pay awarded to the Chief Executive Officer and the other Named Executive Officers is determined by Company performance goals that are established annually. The CGC Committee's approach to base compensation is to offer competitive (although slightly lower than median) salaries to the Chief Executive Officer and the other Named Executive Officers in comparison with market practices. Base salaries have become a relatively smaller component of the total executive officer compensation package as compared with the Company's pay-for-performance component. The 2000 average base salaries for the Named Executive Officers (not including the Chief Executive Officer) increased 13% over 1999 base salaries. (Note: This included increases in salary due to promotions of three of the incumbents during the year.)

How does the Company determine the CEO's and the other Named Executive Officers' salary increases?

The increase in base salaries in 2000 was determined based upon:

o a review of peer group comparison data (using the peer group compensation survey published by Hewitt, formerly known as the MCS survey);\* and

o the subjective analysis of the CGC Committee, after evaluating the recommendations, peer group data, the Company's overall performance, and the respective individual performance criteria of the Chief Executive Officer and the other Named Executive Officers.

Please explain the Company's annual cash bonus program.

The Company's annual cash bonus program for the executive officers makes up the short-term incentive component of the executive officers' cash compensation. The payment of annual cash bonuses is based on both objective and subjective criteria. All full-time employees are eligible to receive a cash bonus.

Objective criteria for executive officers and corporate office employees include actual earnings improvement goals established by the CGC Committee at the end of the prior fiscal year. The Company uses earnings improvement for determining target goals for the executive officers' variable pay for two primary reasons: first, it is a defined measure of total Company performance; and second, it is a measure that can be easily identified and reviewed by shareholders. The objective criteria for field-based employees are primarily based upon store performance.

In order for an executive officer or corporate office employee to receive a cash bonus under the cash bonus program effective for 2000, the Company had to meet CGC Committee-established earnings improvement goals, each exceeding the prior year's performance. For executive officers, if the Company reached the "target" goal, which was considered by the CGC Committee to be challenging, then 25% of salary was to be awarded to each executive officer as a cash bonus. If the Company reached the "stretch" goal, which was considered by the Committee to be extremely challenging, then 75% of salary was to be awarded to each executive officer as a cash bonus. The percentage of salary awarded for earnings performance falling between the "target" and "stretch" goals is on a graduated scale (from 26% of salary to 74% of salary) commensurate with the earnings improvement over the prior year.

Subjective performance criteria include the results of each employee's annual performance and productivity improvement reviews. Each employee's performance is reviewed pursuant to the Company's Performance Review

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\* The peer group compensation survey is published annually by Hewitt (formerly known as the MCS survey). The 2000 survey included the following mass-merchandising companies: Ames Department Stores, Consolidated Stores, K-Mart Stores, Target Stores, Garden Ridge, Shopko Stores, Ross Stores, TJX Companies, Value City and Wal-Mart Stores. For the past eleven years, the Company has used this well-known peer-group annual salary survey when reviewing and establishing the Company's executive compensation policies. Because the Company uses this survey for executive compensation comparison, and because the Company ties executive compensation directly to Company performance, the same peer group survey, with the exception of those companies that are not publicly traded (and for which stock comparison data is therefore unavailable), is used for Company performance comparison purposes.

Process. The Performance Review Process is a comprehensive program that focuses on total performance improvement by concentrating on development goals that tie to performance improvement areas identified in the performance review. Development goals emphasize skill enhancement, leadership development, performance improvement and career goal aspirations of employees. Performance goals focus on the key results required to actively pursue the Company's mission. Development and performance goals are set annually for each management employee with the employee's supervisor, and the payment of an annual bonus is dependent upon the employee achieving his/her individual goals. That is, Company performance is not the sole criterion by which an employee's annual cash bonus payout is determined. Two factors determine whether an employee receives an annual cash bonus: (a) the Company must achieve an established earnings goal; and (b) the individual must achieve a satisfactory performance evaluation based upon the above-described Performance Review Process factors. Therefore, equal weight is given to each of these factors.

Based on performance during 2000, executive officers will not receive a cash bonus in 2001. Executive officers received 46% of their annual salaries as cash bonuses in 1999.

Please explain the Company's Employee Stock Incentive Program.

The Company grants non-qualified stock options under the 1998 Stock Incentive Plan. Stock options are awarded to the executive officers, department directors, field management (including store managers and assistant store managers) and other personnel considered to be in key positions, as approved by the CGC Committee. The Company uses stock options as an incentive for outstanding performance and to encourage stock ownership.

Executive officers, department directors and other key employees receive "performance-accelerated" stock options with annual accelerated-vesting schedules tied to the achievement of corporate performance goals (as measured by earnings improvement) and individual performance goals (as measured by the Performance Review Process).

In 2000, because the Company did not meet its stock option program performance goals, the eligible employees did not vest on an accelerated basis in the options under this program. In 1999, each eligible employee vested in the maximum number of options, which could vest on an accelerated basis under this program because (1) the Company met its stock option program earnings goals and (2) each eligible employee achieved his or her previously established performance goals.

What is a "performance-accelerated" stock option?

To further encourage outstanding performance, the CGC Committee adopted a compensation program that ties the acceleration of stock option vesting to earnings goals. Each eligible employee receives stock option grants with a nine-and-one-half year vesting schedule. However, if the eligible employee meets his/her individual goals and the Company meets or exceeds its established earnings goal, then the stock option grant tied to that goal will vest on an accelerated basis.

How does the Company determine how many stock options to grant?

In determining the number of the shares subject to stock options granted to the employees eligible to participate in the stock incentive plans, the CGC Committee takes into account the employees' scope of accountability, their strategic and operational responsibilities and competitive compensation data.

How does the Company encourage officers to own Company stock?

The CGC Committee established a stock option program called the Stock Plus Program. This program, which is composed of option grants under the 1993 Employee Stock Incentive Plan, the 1995 Employee Stock Incentive Plan and the 1998 Stock Incentive Plan, awards executive officers and other key employees, as determined by the CGC Committee, additional stock options as an incentive for meeting Company stock ownership targets. Stock ownership targets are generally equal to at least two-and-one-half times salary and must be maintained for at least a year prior to receiving a Stock Plus grant. The Chief Executive Officer is required to maintain ownership of four times his salary to be eligible to participate in this program. In 2000 and 1999, each executive officer vested in the maximum number of Stock Plus Program options.

How is the Chief Executive Officer compensated?

As with the other executive officers, the CEO's compensation reflects the Company's increasing emphasis on tying compensation to both short-term and long-term performance. When determining the CEO's salary, the CGC Committee considers the CEO's prior-year performance and expected future contributions to the Company as well as peer-industry survey results published annually. The CEO's annual salary for 2000 was 4% lower than the median of the industry comparison group. The CEO did not receive an increase in his annual salary in 2000.

The CGC Committee believes the CEO should have some compensation at risk in order to encourage performance that maximizes shareholder return; therefore, it has created a significant opportunity for additional compensation through performance-accelerated incentives. The performance-accelerated compensation for which the CEO is eligible takes the form of both short-term and long-term incentives. Like other executive officers, the CEO is eligible for a

cash bonus (the short-term incentive component) based on the attainment of individual goals and Company earnings improvement goals. Also like other executive officers, the CEO is eligible for Stock Incentive Program non-qualified performance-accelerated stock options and stock-ownership-based Stock Plus Program stock options (the long-term incentive component). The Stock Incentive Program stock options, which have a nine-and-one-half year vesting schedule, can be accelerated to an earlier vesting date if certain CGC Committee-established Company earnings improvement goals and individual performance goals are achieved.

The CGC Committee believes that in order to maximize the CEO's performance, a substantial portion of the CEO's compensation should be tied directly to overall Company performance. Consistent with this philosophy, the CGC Committee has established a salary for the CEO that is at or below the median for CEOs of the peer-group compensation survey participants and has emphasized the pay-for-performance components of the CEO's total compensation package. When determining the pay-for-performance component of the CEO's compensation package, the CGC Committee takes into consideration prior pay-for-performance awards. The CGC Committee determined that based on the CEO's individual performance and the performance of the Company, it was important to continue its incentive compensation program in a manner that is competitive in the industry and that continues to motivate and reward outstanding performance.

Under the Company's short-term incentive program (the cash bonus component), the CEO's total possible cash-bonus incentive is 100% of his salary. To be eligible for a cash bonus, the CEO must achieve personal performance goals established by the CGC Committee, and the Company must meet at least one of its earnings improvement goals. If the CEO meets his individual performance goals and the Company meets its CGC Committee-established cash bonus program "target" goal, the CEO will receive a cash bonus equal to 25% of his annual salary. If the CEO's individual goals are met and the CGC Committee-established cash bonus program "stretch" earnings goal is met, then the CEO will receive a cash bonus equal to 100% of his annual salary. The percentage of salary awarded for earnings performance falling between the "target" and "stretch" goals is on a graduated scale (from 26% to 99% of salary) commensurate with the earnings performance.

Because the Company did not meet the target earnings goal set for 2000, the CEO did not receive a cash bonus that would have been paid in 2001. Because the Company exceeded its "target" earnings goal set for 1999, but did not achieve its "stretch" earnings goal established for awarding cash bonus, the CEO's short-term incentive compensation program rewarded the CEO with a cash bonus (paid in 2000) of 46% of his annual salary.



The CEO's long-term incentive compensation program for 2000 rewarded the CEO with stock option grants up to approximately three to four-and-one-half times his annual salary. In 2000, because the CGC Committee-established stock option program goals were not met, the CEO will not vest in any shares available in his stock option grants on an accelerated basis.

The CEO also participates in the Company's Stock Plus program. This program rewards the CEO with additional stock options if he maintains a level of Company stock ownership equal to at least four times his salary.

How is the Company addressing Internal Revenue Code limits on the deductibility of executive compensation?

The Omnibus Budget Reconciliation Act of 1993 (the "Act") places a \$1,000,000 limit on the amount of certain types of compensation for each of the Company's executive officers that will be considered tax deductible. The Company believes that its stock plans, under which stock option grants were made to the executive officers, comply with the Internal Revenue Service's regulations on the deductibility limit. The Company currently has an agreement with the CEO that will result in the deferral of non-performance-related compensation in excess of the \$1,000,000 limit to a year in which the limit would not be exceeded. The Company continues to consider modifications to other compensation programs in light of the Act.

William S. Wire, II - Chairman  
David M. Wilds  
Dennis C. Bottorff  
E. Gordon Gee

### **Common Stock Performance**

The following performance graph compares the Company's cumulative total shareholders' return during the previous five years with a performance indicator of the overall stock market and the Company's peer group. For the overall stock market performance indicator, the Company uses the S&P 500 Index. For the peer group stock market performance indicator, the Company uses the stock market results of the publicly held participants of the compensation survey published by Hewitt used by the CGC Committee when reviewing and establishing the Company's executive compensation policies. See "Report of the Executive Compensation and Corporate Governance Committee of the Board of Directors on Executive Compensation.

**COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\*  
AMONG DOLLAR GENERAL CORPORATION, THE S&P 500 INDEX  
AND A PEER GROUP**

**[GRAPHIC - CHART PLOTTED POINTS TABLE LISTED BELOW]**

	Cumulative Total Return					
	1/96	1/97	1/98	1/99	1/00	1/01
DOLLAR GENERAL CORPORATION	100.00	156.86	289.23	311.16	332.89	384.05
S&P 500	100.00	126.34	160.34	212.43	234.41	232.30
PEER GROUP	100.00	126.42	205.62	417.85	502.88	532.64

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

**Security Ownership of Certain Beneficial Owners**

The following table sets forth certain information concerning persons who, as of December 14, 2001, were known by management to be beneficial owners of more than five percent of the Company's common stock. Unless otherwise indicated, each person for whom information is provided had sole voting and investment power over the shares of common stock listed opposite his or her name.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Shares Outstanding
Cal Turner, Jr. 100 Mission Ridge Goodlettsville, TN 37072-2170	48,148,818 (1)	14.9%
James Stephen Turner 138 Second Avenue Nashville, TN 37201	41,087,516 (2)	12.7%
Turner Children Trust (3) dated January 21, 1980, Cal Turner, Jr. and James Stephen Turner, Co-Trustees 100 Mission Ridge Goodlettsville, TN 37072-2170	31,625,784	9.51%
Capital Research and Management Company 333 South Hope Street Los Angeles, CA 90071	31,133,000 (4)	9.36%
Wellington Management Company, LLP 75 State Street Boston, MA 02109	24,626,675 (5)	7.40%

### Security Ownership by Officers and Directors

The following table sets forth certain information as of December 14, 2001, concerning all directors and nominees, the executive officers named in the Summary Compensation Table (the "Named Executive Officers") and all executive officers and directors as a group. Unless otherwise indicated, the persons for whom information is provided had sole voting and investment power over the shares of Common Stock beneficially owned. Computations are based on 332,577,284 shares of Common Stock outstanding as of December 14, 2001.

(1) Includes 41,449,796 shares held by various trusts and foundations (the largest of which is the "Turner Children Trust" shown in this table) for which Cal Turner, Jr. is a trustee; 727,587 shares held by Cal Turner, Jr.'s wife; 21,403 shares held in Company retirement and deferred compensation plans (IRA & 401(k)); direct ownership of 5,714,094 shares; and 235,938 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days. Cal Turner, Jr. has sole voting and investment power with respect to 5,971,435 shares of Common Stock and shared voting and investment power with respect to 41,449,796 shares of Common Stock. Cal Turner, Jr. disclaims ownership of the shares held by the various trusts and foundations, except to the extent of his pecuniary interests.

(2) Includes 38,694,207 shares held by various trusts and foundations (the largest of which is the "Turner Children Trust" shown in this table) for which James Stephen Turner is a trustee; and 56,445 shares held by James Stephen Turner's wife. James Stephen Turner has sole voting and investment power with respect to 2,336,864 shares of Common Stock and shared voting and investment power with respect to 38,694,207 shares of Common Stock. James Stephen Turner disclaims ownership of the shares held by the various trusts and foundations, except to the extent of his pecuniary interests.

(3) The co-trustees of the "Turner Children Trust" are Cal Turner, Jr. and James Stephen Turner.

(4) According to a Form 13-F (effective September 30, 2001) filed by Capital Research and Management Company on November 14, 2001, it has shared investment power with respect to 31,133,000 shares of Common Stock, but does not have sole or shared voting power over any of the shares of Common Stock. The Company is unable to ascertain more recent information about this entity's holdings.

(5) According to a Form 13-F (effective September 30, 2001) filed by Wellington Management Company, LLP on November 14, 2001, it has sole investment power with respect to 20,813,241 shares of common stock, shared investment power with respect to 3,813,434 shares of Common Stock, sole voting power with respect to 10,777,173 shares of Common Stock, shared voting power with respect to 3,013,309 shares of Common Stock and no voting power with regard to 10,836,193 shares of Common Stock. The Company is unable to ascertain more recent information about this entity's holdings.

Nominee/Executive Officers	Shares Beneficially Owned		Percent of Shares Outstanding(1)
Dennis C. Bottorff	15,621	(2)	*
Barbara L. Bowles	4,150	(3)	*
James L. Clayton	478,623	(4)	*
Reginald D. Dickson	59,512	(5)	*
E. Gordon Gee	6,308	(6)	*
John B. Holland	503,304	(7)	*
Barbara M. Knuckles	20,664	(8)	*
David M. Wilds	269,665	(9)	*
William S. Wire, II	49,457	(10)	*
Cal Turner, Jr.	48,148,818	(11)	14.9%
Brian Burr	25,500	(15)	*
Bob Carpenter	1,627,142	(12,15)	*
Tom Hartshorn	630,936	(13)	*
Stonie O'Briant	328,614	(14)	*
Earl Weissert	31,313	(15)	*
All directors and executive officers as a group (20 persons)	51,101,338	(16, 17)	15.8%

(1) \* Denotes less than 1% of class.

(2) Includes 13,669 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(3) Includes 3,150 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(4) Includes 67,738 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(5) Includes 39,726 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(6) Includes 6,308 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(7) Includes 33,476 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(8) Includes 13,938 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(9) Includes 67,738 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(10) Includes 33,476 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(11) Includes 235,938 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days, and also includes shares beneficially owned as set forth under "Security Ownership of Certain Beneficial Owners."

(12) Includes 656,628 shares issuable upon the exercise of outstanding options or options exercisable within 60 days, and 494,449 shares for which Mr. Carpenter has shared voting and investment rights as a Co-Trustee of the Calister Turner, III 1994 Generation Skipping Trust.

(13) Includes 445,427 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(14) Includes 238,041 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(15) Denotes that executive officer has left the Company.

(16) Includes 1,680,723 shares issuable upon the exercise of outstanding options currently exercisable or exercisable within 60 days.

(17) Includes only those individuals who were directors or executive officers as of December 14, 2001.

### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

John B. Holland, a director of the Company, was a director and executive officer of Fruit of the Loom, Inc., a manufacturer of underwear and other soft goods during 2000. In 2000, the Company purchased approximately \$53.5 million in goods from Fruit of the Loom, Inc.

The Board of Directors has authorized the Company, pursuant to the Company's By-laws and Section 48-18-504 and Section 48-18-507 of the Tennessee Business Corporation Act, to advance to the Chairman and Chief Executive Officer and to certain officers, employees and agents of the Company reasonable expenses, including legal fees, for representation in connection with legal proceedings and investigations arising out of the Company's April 30, 2001, announcement of its intention to restate certain previously released financial information. Such advances have been made pursuant to a written undertaking by each such person to repay in full the amounts advanced if it is ultimately determined that such person is not entitled to indemnification by the Company in connection with such legal proceedings and investigations. No interest is being charged on these advances. Because the legal proceedings are at any early stage, the Company cannot reasonably estimate the total amount of expenses that may ultimately be advanced, either to any individual officer, employee or agent or in the aggregate.

## PART IV

### ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a) (1) Consolidated Financial Statements: See Item 8.

(2) All schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions, are inapplicable or the information is included in the Consolidated Financial Statements, and therefore, have been omitted.

(3) Exhibits: See Index to exhibits immediately following the signature page.

(b) (1) A Current Report on Form 8-K, dated November 2, 2000, was filed with the SEC in connection with an announcement about October 2000 sales results and November 2000 sales expectations.

(2) A Current Report on Form 8-K, dated November 9, 2000, was filed with the SEC in connection with an announcement about third quarter earnings and the Company's expectations for financial results for the 2000 fiscal year.

(3) A Current Report on Form 8-K, dated December 1, 2000, was filed with the SEC in connection with an announcement about November 2000 sales results and December 2000 sales expectations.

(4) A Current Report on Form 8-K, dated January 4, 2001, was filed with the SEC in connection with an announcement about December 2000 sales results and January 2001 sales expectations.

(5) A Current Report on Form 8-K, dated January 23, 2001, was filed with the SEC in connection with an announcement about January 2001 sales results and the Company's updated earnings outlook for the 2000 fiscal year.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

### DOLLAR GENERAL CORPORATION

Date: January 14, 2002

By: /s/ Cal Turner, Jr.

-----  
CAL TURNER, JR., CHIEF EXECUTIVE  
OFFICER

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Name	Title	Date
-----	-----	-----
/s/ Cal Turner, Jr. ----- CAL TURNER, JR.	Chairman and Chief Executive Officer (Principal Executive Officer)	January 14, 2002
/s/ James J. Hagan ----- JAMES J. HAGAN	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	January 14, 2002
/s/ Dennis C. Bottorff ----- DENNIS C. BOTTORFF	Director	January 14, 2002
/s/ Barbara L. Bowles ----- BARBARA L. BOWLES	Director	January 14, 2002
/s/ James L. Clayton ----- JAMES L. CLAYTON	Director	January 14, 2002
/s/ Reginald D. Dickson ----- REGINALD D. DICKSON	Director	January 14, 2002
/s/ E. Gordon Gee ----- E. GORDON GEE	Director	January 14, 2002
/s/ John B. Holland ----- JOHN B. HOLLAND	Director	January 14, 2002
/s/ Barbara M. Knuckles ----- BARBARA M. KNUCKLES	Director	January 14, 2002
/s/ David M. Wilds ----- DAVID M. WILDS	Director	January 14, 2002
/s/ William S. Wire, II ----- WILLIAM S. WIRE, II	Director	January 14, 2002

## INDEX TO EXHIBITS

- 3.1 Restated Charter (incorporated by reference to the Company's Current Report on Form 8-K filed February 29, 2000).
- 3.2 Bylaws (incorporated by reference to the Company's Proxy Statement for the June 1, 1998, Annual Meeting of Shareholders).
- 4.1 Sections 7, 8, 9, 10 and 12 of the Company's Restated Charter (included in Exhibit 3.1).
- 4.2 Rights Agreement dated as of February 29, 2000, between Dollar General Corporation and Registrar and Transfer Company (incorporated by reference to the Company's Current Report on Form 8-K filed February 29, 2000).
- 10.1 Indenture, dated as of June 21, 2000, by and among Dollar General Corporation, the guarantors named therein, as guarantors, and First Union National Bank, as trustee (incorporated by reference to the Company's Registration Statement on Form S-4 filed August 1, 2000), as amended by the First Supplemental Indenture, dated as of July 28, 2000, by and among Dollar General Corporation, the guarantors named therein, as guarantors, and First Union National Bank, as trustee.
- 10.2 Master Agreement, dated as of June 11, 1999, by and among Dollar General Corporation; Certain Subsidiaries of Dollar General Corporation; Atlantic Financial Group, Ltd.; Three Pillars Funding Corporation; Certain Financial Institutions Parties Hereto; SunTrust Bank, Nashville N.A.; First Union National Bank, Bank of American National Trust and Savings Bank; The First National Bank of Chicago and Wachovia Bank, N.A.; and SunTrust Equitable Securities Corporation (incorporated by reference to the Company's Amended Quarterly Report for the quarter ended July 30, 1999, on Form 10-Q/A filed April 25, 2000).
- 10.3 Master Lease Agreement, dated as of June 11, 1999, between Atlantic Financial Group, Ltd. and Dollar General Corporation and Certain Subsidiaries of Dollar General Corporation (incorporated by reference to the Company's Amended Quarterly Report for the quarter ended July 30, 1999, on Form 10-Q/A filed April 25, 2000).
- 10.4 Guaranty Agreement dated as of June 11, 1999, by Dollar General Corporation (incorporated by reference to the Company's Amended Quarterly Report for the quarter ended July 30, 1999, on Form 10-Q/A filed April 25, 2000).
- 10.5 Subsidiary Guarantee dated as of June 11, 1999, by Dolgencorp, Inc., Dolgencorp of Texas, Inc., Dade Lease Management, Inc., Dollar General Financial, Inc. and Dollar General Partners



(incorporated by reference to the Company's Amended Quarterly Report for the quarter ended July 30, 1999, on Form 10-Q/A filed April 25, 2000).

- 10.6 Credit Agreement dated as of September 2, 1997, by and among Dollar General Corporation and SunTrust Bank, Nashville, N.A. (incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended October 31, 1997).
- 10.7 Master Agreement dated as of September 2, 1997, by and among Dollar General Corporation, Certain Subsidiaries of Dollar General Corporation, Atlantic Financial Group, Ltd., Certain Financial Institutions Parties hereto at SunTrust Bank, Nashville, N.A. (incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended October 31, 1997).
- 10.8 Dollar General Corporation 1988 Outside Directors' Stock Option Plan, as amended, (incorporated herein by reference to the Company's Proxy Statement for the June 3, 1996, Annual Meeting of Stockholders).
- 10.9 Dollar General Corporation 1989 Employee Stock Incentive Plan, as amended (incorporated by reference to the Company's Proxy Statement for the June 13, 1989, Annual Meeting of Stockholders).
- 10.10 1993 Employee Stock Incentive Plan (incorporated herein by reference to the Company's Proxy Statement for the June 7, 1993, Annual Meeting of Stockholders).
- 10.11 1993 Outside Directors Stock Option Plan (incorporated herein by reference to the Company's Proxy Statement for the June 7, 1993, Annual Meeting of Stockholders).
- 10.12 1995 Employee Stock Incentive Plan (incorporated herein by reference to the Company's Proxy Statement for the June 5, 1995, Annual Meeting of Stockholders).
- 10.13 1995 Outside Directors Stock Option Plan (incorporated herein by reference to the Company's Proxy Statement for the June 5, 1995, Annual Meeting of Stockholders).
- 10.14 1998 Stock Incentive Plan (incorporated herein by reference to the Company's Proxy Statement for the June 5, 2000, Annual Meeting of Shareholders).

- 10.15 Dollar General Corporation Supplemental Executive Retirement Plan and Compensation Deferral Plan (incorporated by reference to the Company's Registration Statement on Form S-8 filed December 21, 1999).
- 10.16 Dollar General Corporation Deferred Compensation Plan for Non-Employee Directors as amended and restated effective November 6, 2000.
- 10.17 Sale and Purchase Agreement, dated as of June 1, 2000, among Dollar General Corporation as Lessee and Seller, FU/DG Fulton, LLC, as Lessor, and First Union Commercial Corporation, as Head Lessor.
- 10.18. Sale and Purchase Agreement, dated as of June 1, 2000, among Dollar General Corporation as Lessee and Seller, FU/DG Indianola, LLC, as Lessor, and First Union Commercial Corporation, as Head Lessor.
- 10.19 Lease Agreement, dated as of June 1, 2000, between FU/DG Fulton LLC, as Lessor and Dollar General Corporation, as Lessee.
- 10.20 Lease Agreement, dated as of June 1, 2000, between FU/DG Indianola, LLC, as Lessor and Dollar General Corporation, as Lessee.
- 21 Subsidiaries of the Registrant
- 23 Consent of Independent Auditors

**EXHIBIT 10.1**  
**FIRST SUPPLEMENTAL INDENTURE**

FIRST SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of July 28, 2000 among: Dollar General Corporation (the "Company"), a corporation duly organized and existing under the laws of the State of Tennessee; Dolgencorp, Inc., a Kentucky corporation; Dolgencorp of Texas, Inc., a Kentucky corporation; DG Logistics, LLC, a Tennessee limited liability company; Dade Lease Management, Inc., a Delaware corporation; Dollar General Partners, a Kentucky general partnership; Dollar General Financial, Inc., a Tennessee corporation; Nations Title Company, Inc., a Tennessee corporation; and Dollar General Intellectual Property, L.P., a Vermont limited partnership (collectively, the "Existing Guarantors"); The Greater Cumberland Insurance Company, a Vermont corporation (the "Additional Guarantor" and, together with the Existing Guarantors, the "Guarantors"); and First Union National Bank, a national banking association, as trustee (the "Trustee").

**WITNESSETH**

WHEREAS, the Company and the Existing Guarantors have heretofore executed and delivered to the Trustee an indenture (the "Indenture"), dated as of June 21, 2000, providing for the issuance of an aggregate principal amount of \$200,000,000 of 8 5/8% Notes due June 15, 2010 (the "Notes");

WHEREAS, Section 4.06 and Article X of the Indenture provide that under certain circumstances the Company may or must cause certain of its Subsidiaries to execute and deliver to the Trustee a supplement to the Indenture pursuant to which such Subsidiaries shall unconditionally guarantee all of the Company's Obligations under the Notes pursuant to a Guarantee on the terms and conditions set forth herein; and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company, the Additional Guarantor and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
2. Agreement to Guarantee. The Additional Guarantor hereby agrees, jointly and severally with all other Guarantors, to unconditionally guarantee the Company's Obligations under the Notes and the Indenture on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by all other applicable provisions of the Indenture and the Notes. The Additional Guarantor hereby agrees that its Guarantee shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Guarantee. This Guarantee is subject to release as and to the extent provided in Section 10.04 of the Indenture. This Guarantee shall remain in full force and effect irrespective of the release of the Guarantee of any Guarantor other than the Additional Guarantor as provided in Section 10.04 of the Indenture.
3. No Recourse Against Others. No past, present or future director, officer, employee, incorporator, partner, member, shareholder or agent of any Guarantor, as such, shall have any liability for any obligations of the Company or any Guarantor under the Notes, any Guarantee, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations. Each Holder by accepting a Note waives and releases all such liability. Such waiver and release form a part of the consideration for issuance of the Notes and the Guarantees.
4. Governing Law. This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the State of New York.
5. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.
6. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.
7. The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the correctness of the recitals of fact contained herein, all of which recitals are made solely by the Additional Guarantor.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

**THE GREATER CUMBERLAND  
INSURANCE COMPANY**

By: /s/ Robert C. Layne  
-----

Name: Robert C. Layne  
Title: Secretary

**DOLLAR GENERAL CORPORATION**

By: /s/ Wade Smith  
-----

Name: Wade Smith  
Title: Treasurer

**DOLGENCORP, INC.**

By: /s/ Wade Smith  
-----

Name: Wade Smith  
Title: Treasurer

**DOLGENCORP OF TEXAS, INC.**

By: /s/ Wade Smith  
-----

Name: Wade Smith  
Title: Treasurer

**DG LOGISTICS, LLC**

By: Dolgencorp, Inc., its Managing  
Member

By: /s/ Wade Smith  
-----

Name: Wade Smith  
Title: Treasurer

**DADE LEASE MANAGEMENT, INC.**

By: /s/ Wade Smith  
-----

Name: Wade Smith  
Title: Treasurer

**DOLLAR GENERAL PARTNERS**

By: Dolgencorp, Inc., a general partner

By: /s/ Wade Smith  
-----

Name: Wade Smith  
Title: Treasurer

By: Dade Lease Management, Inc., a  
general partner

By: /s/ Wade Smith  
-----

Name: Wade Smith  
Title: Treasurer

By: Dollar General Financial, Inc., a  
general partner

By: /s/ Wade Smith  
-----  
Name: Wade Smith  
Title: Treasurer

**DOLLAR GENERAL FINANCIAL, INC.**

By: /s/ Wade Smith  
-----  
Name: Wade Smith  
Title: Treasurer

**NATIONS TITLE COMPANY, INC.**

By: /s/ Robert C. Layne  
-----  
Name: Robert C. Layne  
Title: Secretary

**DOLLAR GENERAL INTELLECTUAL  
PROPERTY, L.P.**

By: Dade Lease Management, Inc., its  
General Partner

By: /s/ Wade Smith  
-----  
Name: Wade Smith  
Title: Treasurer

**FIRST UNION NATIONAL BANK,  
as Trustee**

By: /s/ Susan K. Baker  
-----  
Name: Susan K. Baker  
Title: Vice President

**EXHIBIT 10.16**  
**DOLLAR GENERAL CORPORATION**  
**DEFERRED COMPENSATION PLAN**  
**FOR NON-EMPLOYEE DIRECTORS**

**GENERAL PROVISIONS**

**PURPOSE.** The purpose of this Dollar General Corporation Deferred Compensation Plan for Non-Employee Directors (the "Plan") is to provide each Director with an opportunity to defer some or all of the Director's Fees as a means of saving for retirement or other purposes.

**DEFINITIONS.** The following definitions shall be applicable throughout the Plan:

"Beneficiary" means the person(s) who, upon the death of a Participant, shall have acquired by will, laws of descent and distribution or by other legal proceedings, the right to receive the benefits specified under this Plan in the event of a Director's death.

"Board" means the Board of Directors of Dollar General Corporation.

"Change in Control" means the happening of any of the following: (i) any person or entity, including a "group" as defined in Section 13(d)(3) of the Exchange Act, other than the Company or a wholly-owned subsidiary thereof or any employee benefit plan of the Company or any of its subsidiaries, becomes the beneficial owner of the Company's securities having 35% or more of the combined voting power of the then outstanding securities of the Company that may be cast for the election of directors of the Company (other than as a result of an issuance of securities initiated by the Company in the ordinary course of business); or (ii) as the result of, or in connection with, any cash tender or exchange offer, merger or other business combination, sales of assets or contested election, or any combination of the foregoing transactions, less than a majority of the combined voting power of the then outstanding securities of the Company or any successor corporation or entity entitled to vote generally in the election of the directors of the Company or such other corporation or entity after such transaction are held in the aggregate by the holders of the Company's securities entitled to vote generally in the election of directors of the Company immediately prior to such transaction; or (iii) during any period of two consecutive years, individuals who at the beginning of any such period constitute the Board cease for any reason to constitute at least a majority thereof, unless the election, or the nomination for election by the Company's shareholders, of each director of the Company first elected during such period was approved by a vote of at least two-thirds of the directors of the Company then still in office who were directors of the Company at the beginning of any such period.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Committee" means the Non-Employee Directors Deferred Compensation Committee consisting of such persons as may be designated by the Board from time to time.

"Common Stock" means the common stock, \$0.50 par value, of Dollar General Corporation.

"Company" means Dollar General Corporation and its subsidiaries.

"Deferred Compensation" means the amount of Fees that a Participant defers pursuant to his or her Election and that the Participant and the Company mutually agree shall be deferred in accordance with the Plan.

"Deferred Compensation Account" means either an Investment Account or a Phantom Stock Unit Account maintained by the Company on its books for a Participant and to which shall be credited the Participant's Deferred Compensation, together with gains or losses determined under Article II, Section 1, and which shall be reduced by any distributions made to a Participant. The Company, at the discretion of the Committee, may establish such other Deferred Compensation Accounts or discontinue any Deferred Compensation Accounts as it determines to be appropriate from time to time.

"Director" means any non-employee director of the Company.

"Election" means a Participant's delivery of a written notice of election to the Secretary of the Company electing to defer payment of his or her Fees.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Fees" mean the annual retainer, meeting and other fees, as well as any per diem compensation for special assignments, earned by a Director for his or her service as a member of the Board or a committee thereof during a Plan Year or portion thereof.

"Investment Account" means a hypothetical investment account pursuant to which a Participant's Deferred Compensation shall be treated as if it had been invested in a fund (to be selected by the Participant from a group of funds designated by the Committee) on the date on which the Participant's Deferred Compensation is credited to the Participant's Deferred Compensation Account.

"Market Value" means the average of the daily high and low trading prices of a share of Common Stock on the New York Stock Exchange (or, if the Common Stock is not listed on such exchange, on any other national securities exchange on which the Common Stock is listed) on the date upon which such Market Value is to be



determined for the purpose of crediting a Participant's Phantom Stock Unit Account or making a distribution to a Participant therefrom. If the Common Stock is not traded on any national securities exchange, the Market Value shall be determined by the Committee in good faith.

"Participant" means a Director who has elected to defer payment of all or a portion of his or her Fees.

"Payment Commencement Date" means the date payments of amounts deferred begin pursuant to Article II, Section 5.

"Personal Representative" means the person or persons who, upon the disability or incompetence of a Director, shall have acquired on behalf of the Director, by legal proceeding or otherwise, the right to receive the benefits specified in this Plan.

"Phantom Stock Unit Account" means a Deferred Compensation Account pursuant to which a Participant's Deferred Compensation shall be treated as if it had been used to purchase shares of Common Stock of the Company on the date on which the Participant's Deferred Compensation is credited to the Participant's Deferred Compensation Account.

"Plan" means this Dollar General Corporation Deferred Compensation Plan for Non-Employee Directors.

"Plan Year" means February 1 through the next following January 31.

"Termination" means retirement from the Board or termination of service as a Director for any other reason.

"Unforeseeable Hardship" means severe financial hardship to a Participant resulting from a sudden and unexpected illness or accident of the Participant or a dependent (as defined in Section 152(a) of the Code) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

**ELIGIBILITY.** Any non-employee Director of the Company shall be eligible to participate in the Plan.

**ADMINISTRATION.** Except as otherwise set forth below, full power and authority to construe, interpret and administer the Plan shall be vested in the Committee. Decisions of the Committee shall be final, conclusive and binding upon all parties. Day-to-day administration of the Plan shall be the responsibility of the Company's Corporate Securities Department. This Department may authorize new or modify existing forms for use under this Plan so long as any such modified or new forms are not inconsistent with the terms of the Plan.

## **DEFERRED COMPENSATION**

**DEFERRED COMPENSATION ACCOUNTS.** A Director who has elected to defer all or a portion of his or her Fees by filing an Election as provided in Section 3 of this Article shall have such Deferred Compensation credited to a Deferred Compensation Account. The Company shall maintain one or more Deferred Compensation Accounts, with respect to Deferred Compensation under the Plan, for each Participant in accordance with the terms of the Plan and the instructions provided by such Participant. The establishment of such Deferred Compensation Accounts constitutes only a method, by bookkeeping entry, of determining the amount of deferred payments to be made under the Plan. The Company shall be under no obligation to acquire or hold any Common Stock or any other securities or specific assets by reason of the credits made to the Deferred Compensation Accounts hereunder.

A Participant's or Beneficiary's rights to receive payments under this Plan are merely those of an unsecured general creditor of the Company. Such rights constitute a mere promise by the Company to make payments to Participants and their Beneficiaries in the future. All amounts under the Plan, including a Participant's Deferred Compensation Accounts, shall remain (until paid to the Participant or Beneficiary) the property of the Company and shall be subject to the claims of the Company's creditors in the event of the Company's financial insolvency. The Plan shall be unfunded for federal tax purposes and for purposes of Title I of ERISA. The obligation of the Company may, in its sole discretion, be satisfied from any source of funds, including but not limited to payment from a trust or trusts established by the Company which permit such payments to be made therefrom. No Participant or Beneficiary shall have any secured or beneficial interest in any property, rights or investments held by the Company, whether or not held in connection with the Plan, including but not limited to any assets held in any trust established by the Company in connection with the Plan.

Subject to the approval of the Committee, a Participant's Deferred Compensation shall be credited to an Investment Account or a Phantom Stock Unit Account (or such other Deferred Compensation Account as may then be in effect), as selected by the Participant, as soon as practicable following the time at which such amounts would have been paid to the Participant in the absence of an Election to defer such amount of Deferred Compensation.

The Investment Account shall be adjusted with such interest, gains or losses, or other accretions and adjustments, as determined to be appropriate by the Committee in order to simulate the investment performance of such fund made available pursuant to the terms of the Plan and selected by the Participant.

Deferred Compensation or other amounts credited to a Phantom Stock Unit Account shall be converted into a number of phantom stock units of Common Stock of the Company. The number of phantom stock units of Common Stock of the Company to be so credited shall be equal to the Deferred Compensation or other amounts to be credited to the Phantom Stock Unit Account, divided by the Market Value of a share of Common Stock on the date of the credit. Permitted accretion and adjustments shall be credited and determined as set forth below:

As of the date when any cash dividend or other cash distribution is payable with respect to the Common Stock, there shall be credited to the Phantom Stock Unit Account an amount equal to the value which would have been payable with respect to shares of Common Stock equal in number to the number of phantom stock units then credited to the Phantom Stock Unit Account. Such amount shall then be converted into a number of phantom stock units based upon the amount to be credited divided by the Market Value of a share of Common Stock on the date of the credit.

In the event of any change in the number of shares of outstanding Common Stock by reason of any stock split, stock dividend, recapitalization, or the like, whereby the outstanding shares of Common Stock are adjusted, the number of phantom stock units credited to the Phantom Stock Unit Account shall be equitably adjusted to reflect such change.

The Company may change, discontinue, or add any Deferred Compensation Accounts at any time as determined by the Committee in the Committee's sole discretion. Any Deferred Compensation Account not specifically described above shall be credited with such interest, gains or losses, or other accretions and adjustments, as determined to be appropriate by the Committee in order to simulate the investment performance of such asset, category of assets, fund, index or other investment vehicle selected by the Committee in its discretion to be applicable to such Deferred Compensation Account.

The Committee or the Board may, but is not required to, establish rules and procedures under which Participants may direct that amounts credited to one or more Deferred Compensation Accounts be transferred to other Deferred Compensation Accounts that may be available under the Plan (an "Account Transfer"), provided that no Participant may direct either an Account Transfer to the Phantom Stock Unit Account or an Account Transfer from the Phantom Stock Account without the prior approval of the Board or the Committee.

**UNFORESEEABLE HARDSHIP.** Upon the written request of a Participant or a Participant's legal representative and a finding that continued deferral will result in an Unforeseeable Hardship to the Participant, the Board (in its sole discretion) may authorize (a) the payment of all or a part of a Participant's Deferred Compensation Accounts in a single installment prior to his or her ceasing to be a Director, or (b) the acceleration of payment of any multiple

installments hereof. Any such written request must set forth the circumstances constituting such Unforeseeable Hardship. Notwithstanding the foregoing, the Board may not direct payment of any amounts credited to the Deferred Compensation Accounts of a Participant to the extent that such Unforeseeable Hardship is or may be relieved (a) through reimbursement or compensation by insurance or otherwise; (b) by liquidation of the Participant's assets, to the extent that such liquidation would itself not cause severe financial hardship; or (c) by cessation of deferrals under the Plan. Any distribution due to Unforeseeable Hardship shall only be permitted to the extent reasonably needed to satisfy such hardship, and shall be made in the sole discretion of the Board, both with respect to the determination as to whether an Unforeseeable Hardship exists and as to the amount distributable. In all cases, the requirements and standards set forth in Section 1.457-2(h)(4) and (5) of the Income Tax Regulations will govern the determinations of a Participant's eligibility for and the amount of any distributions under this Section 2.

### **MANNER OF ELECTION**

Any Director wishing to participate in the Plan must deliver to the Secretary of the Company a written notice electing to defer to a period following his or her Termination payment of all or any portion of his or her Fees. The Election must be filed on or before January 1 of a Plan Year in order to be effective for Fees earned in that Plan Year.

With respect to Directors' Fees payable for all or any portion of a Plan Year after a person's initial election to the office of Director of the Company, any such person wishing to participate in the Plan may file a proper Election within 30 days after election to office. Any Election shall be effective upon filing or as soon as possible thereafter with respect to such Fees.

An effective Election may not be revoked or modified (except as to changes in the designation of Beneficiary and as otherwise stated herein) with respect to Fees payable for a Plan Year or portion of a Plan Year for which the Election is effective. An Election shall apply only for such Plan Year. In order to defer a portion of his or her Fees for a subsequent Plan Year, a Director must make a new Election in accordance with Section 3(a) of this Article.

### **MANNER OF PAYMENT UPON TERMINATION**

At the time of each Election, pursuant to Section 3 of this Article, to defer receipt of a portion of his or her Fees, a Participant shall also make an election, on such form as the Company may prescribe, as to the time and manner of payment of the portion of his or her Deferred Compensation Accounts attributable to the amount of Deferred Compensation specified in such Election.

In accordance with the Participant's election and subject to Board approval upon payout, amounts credited to a Participant's Deferred Compensation Account will be paid in a lump sum or in the form of annual installments in cash, or a combination of both, to the Participant following his or her Termination or, in the event of his or her death, to a Beneficiary. If a Participant elects to receive payment in annual installments, the payment period shall not exceed five (5) years following the date of the Participant's Termination.

The amount paid to a Participant pursuant to this Section 4 shall be as follows:

For an Investment Account, the number of dollars equal to the balance in such Investment Account on the date of Termination.

For a Phantom Stock Unit Account, the number of dollars equal to the number of phantom stock units in the Phantom Stock Unit Account of such Participant on the date of Termination, multiplied by the Market Value of a share of Common Stock immediately preceding the date of Termination.

The amount of any cash distribution to be made in installments with respect to a Deferred Compensation Account will be determined by dividing (i) the current balance in such Deferred Compensation Account by (ii) the number of installments in which distributions remain to be made (including the current distribution).

All payments made pursuant to this Section 4 shall be reduced by the amount of any federal, state, or local income or other taxes required to be withheld by the Company or other payor.

A Participant may change his or her payment election in accordance with procedures determined by the Company, provided, however, that no elections under this Section 4 may be made or changed as to distributions from a Participant's Phantom Stock Unit Account (if any) unless the Board has approved in advance such election or change of election in a manner that satisfies the requirements for exemption of Phantom Stock Unit Account transactions under Rule 16b-3 of the Exchange Act.

**PAYMENT COMMENCEMENT DATE.** Payments of amounts deferred pursuant to a valid Election shall commence after a Director's Termination (i) with respect to a lump sum, on the February 1 of the year selected by a Director in his or her Election and (ii) with respect to annual installments, on the February 1 of the first year of deferred payment selected by a Director in his or her Election. If a Director dies prior to the first deferred payment specified in an Election, payments shall commence to the Employee's Beneficiary on the first payment date so specified.

**CHANGE IN CONTROL.** Notwithstanding any provision of this Plan to the contrary, in the event of a "Change in Control" (as defined in Section 2(c) of Article I), each Participant shall receive an automatic lump sum cash distribution of all amounts accrued in the Director's Deferred Compensation Account not later than fifteen (15) days after the date of the "Change in Control".

The amount paid to a Participant pursuant to this Section 6 shall be as follows:

For an Investment Account, the number of dollars equal to the balance in such Investment Account on the date of the "Change in Control."

For a Phantom Stock Unit Account, the number of dollars equal to the number of phantom stock units in the Phantom Stock Unit Account of such Participant on the date of the "Change in Control," multiplied by the Market Value of a share of Common Stock immediately preceding the date of the "Change in Control."

In addition, the Company shall reimburse a Director for the legal fees and expenses incurred if the Director is required to seek to obtain or enforce any right to distribution. Notwithstanding any provision of this Plan to the contrary, Article I, Section 2(c) and Section 6 of this Article may not be amended after a "Change in Control" occurs without the written consent of a majority in number of Directors.

## **MISCELLANEOUS PROVISIONS**

**BENEFICIARY DESIGNATION.** A Director may designate any person to whom payments are to be made if the Director dies before receiving payment of all amounts due hereunder. A designation of a Beneficiary will be effective only after the signed Election is filed with the Secretary of the Company while the Director is alive and will cancel all designations of a Beneficiary signed and filed earlier. If the Director fails to designate a Beneficiary as provided above, remaining unpaid amounts shall be paid in one lump sum to the estate of such Director. If all Beneficiaries of the Director die before the Director or before complete payment of all amounts due hereunder, the remaining unpaid amounts shall be paid in one lump sum to the estate of the last to die of such Beneficiaries.

**INALIENABILITY OF BENEFITS.** The interests of the Directors and their Beneficiaries under the Plan may not in any way be voluntarily or involuntarily transferred, alienated or assigned, nor be subject to attachment, execution, garnishment or other such equitable or legal process.

**GOVERNING LAW.** The provisions of this Plan shall be interpreted and construed in accordance with the laws of the State of Tennessee.

AMENDMENTS. The Committee may amend, alter or terminate this Plan at any time without the prior approval of the Directors; provided, however, that the Committee may not, without approval by the Directors:

materially modify the requirements as to eligibility for participation in the Plan; or

otherwise materially increase the benefits accruing to participants under the Plan.

EFFECTIVE DATE. This Plan amends and restates the Dollar General Corporation Deferred Compensation Plan originally adopted effective February 28, 1994.

SHAREHOLDER RIGHTS. No Participant shall have any rights as a shareholder of the Company with respect to a Phantom Stock Unit Account, except the right to have deemed dividends credited to his or her Phantom Stock Unit Account and adjustments made to the hypothetical shares of Common Stock under Article II, Section 1(e).

SECTION 16(b) OF THE EXCHANGE ACT. To the extent applicable, all elections and transactions under this Plan are intended to comply with any applicable exemptive condition, and administered in all respects in accordance with the conditions, set forth in Rule 16b-3 promulgated under the Exchange Act. The Committee may establish and adopt written administrative guidelines designed to facilitate compliance with Section 16(b) of the Exchange Act and the rules thereunder as it may deem necessary or proper for the administration and operation of this Plan thereunder.

**SALE AND PURCHASE AGREEMENT**

**Dated as of June 1,2000**

among

**DOLLAR GENERAL CORPORATION,  
as Lessee and as Seller**

and

**FU/DG FULTON, LLC,  
as Lessor**

**FIRST UNION COMMERCIAL CORPORATION,  
as Head Lessor**

Property:  
1900 North Highway 54  
Fulton, Missouri 65251  
Calloway County



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SALE AND PURCHASE AGREEMENT (this "Agreement") dated as of June 1, 2000 among FU/DG FULTON, LLC, a Delaware limited liability company, having its principal place of business at First Union Securities, 301 South College Street -- NC0166, Charlotte, NC 28288-0166 (the "Lessor"), FIRST UNION COMMERCIAL CORPORATION, a North Carolina corporation having its principal place of business at One First Union Center, 301 South College Street, 20th Floor, Charlotte, North Carolina 28288 (the "Head Lessor" and together with the Lessor, the "Purchasers"), and DOLLAR GENERAL CORPORATION, a Tennessee corporation, ("Lessee" or "Seller"), having its principal place of business at 100 Mission Ridge, Goodlettsville, Tennessee 37072.

**WITNESSETH:**

**RECITALS**

WHEREAS, Atlantic Financial Group, Ltd., a Texas limited partnership ("AFG") is the legal owner of the parcels of land described on Schedule I hereto, together with all rights of way, easements, strips, gores, alleys, servitudes, licenses, rights, benefits, oil, gas, water, mineral and air rights, tenements, hereditaments and appurtenances belonging or pertaining to such parcels of land (the "Land") and all of the buildings, structures, other improvements and fixtures now located on the Land (the "Improvements;" the Land and the Improvements thereon being the "Real Property"), which Real Property is subject to the Permitted Encumbrances set forth on Exhibit A attached hereto; and

WHEREAS, AFG is also the owner of the racks, conveyors and other equipment described on Schedule II (the "Equipment," and together with the Real Property, the "Property");

WHEREAS, AFG is leasing the Property to Lessee pursuant to a synthetic lease (the "Synthetic Lease");

WHEREAS, on the terms and provisions herein, Seller wishes to sell or cause the sale of the Real Property to the Lessor and the Equipment to the Head Lessor;

WHEREAS, pursuant to this Agreement, the Head Lessor and the Head Lessee will execute the Head Lease of even date herewith providing for the lease of the Equipment by the Head Lessor to the Head Lessee, and the Lessor and the Lessee will execute the Lease dated of even date herewith providing for the lease of the Property by the Lessor to the Lessee.

NOW, THEREFORE, in consideration of the premises, in consideration of the covenants and provisions herein and other good and valuable consideration, and intending to be bound hereby, the parties hereto agree as follows:

## SECTION 1. Definitions.

The capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in Appendix A to that certain Lease Agreement dated as of the date hereof between Head Lessee in its capacity as Lessor thereunder and Dollar General Corporation, a Tennessee corporation, as lessee (the "Lessee") or the other relevant Operative Documents defining such terms, and all rules of usage set forth in Appendix A shall apply.

"Assignment of Lease" shall mean the Lease Assignment and Agreement dated as of June 1, 2000, by and among the Lessor, as assignor, and the Agent, as assignee, for the benefit of the Holders and the Head Lessor, as their interests may appear in accordance with the Intercreditor Agreement, with respect to the Lease.

"Bill of Sale" shall mean a bill of sale with respect to the Equipment, in form and substance acceptable to Head Lessor, to be delivered to Seller to Head Lessor under the Purchase Agreement upon satisfaction of the conditions precedent set forth therein.

"Closing Date" shall mean the date on which the Real Property is acquired by the Lessor and the Equipment is acquired by the Head Lessor.

"Deed" shall mean that special or limited warranty deed to be delivered to Lessor by AFG under the Purchase Agreement upon satisfaction of the conditions precedent set forth therein, such Deed to be in form and substance acceptable to the Lessor.

"Environmental Reports" shall mean the reports and information covering the Property prepared by the Approved Environmental Consultant.

## SECTION 2. Agreement to Sell, Purchase and Lease.

Subject to the provisions and conditions of this Agreement, on the Closing Date, (i) Seller shall cause AFG and Seller (the "Seller Group") to sell, assign and convey to the Lessor and the Lessor shall purchase from the Seller Group the Real Property free and clear of all Liens, encumbrances, claims, defects and other exceptions to the title in the Property, subject only to the Permitted Encumbrances, (ii) Seller shall cause the Seller Group to sell, assign and convey to Head Lessor and Head Lessor shall purchase from the Seller Group the Equipment free and clear of all liens, encumbrances, claims, defects and other exceptions to title, (iii) Head Lessor shall lease to Head Lessee and Head Lessee shall lease from Head Lessor the Equipment under and pursuant to the Head Lease, and (iv) Lessor shall lease to Lessee and Lessee shall lease from Lessor the Property under and pursuant to the Lease.

## SECTION 3. Purchase Price.

The purchase price (the "Purchase Price") for the Real Property shall be as follows:

- (a) Payable by the Head Lessor for the Equipment in the amount of \$20,179,747.00;
- (b) Payable by the Lessor for the Real Property in the amount of \$36,201,871.00;

(c) Upon satisfaction of the conditions set forth herein, the portion of the Purchase Price payable by each of the Head Lessor and the Lessor shall be payable to Seller on the Closing Date by wire or intrabank transfer of immediately available funds to Seller or its designee at First Union National Bank, Account No. 202 0000451297, ABA 053000219, Ref.: Dollar General (Loan #37-4000002), Attn: Lisa Traylor or such other account as Seller may designate not less than three (3) Business Days before the Closing Date.

#### SECTION 4. Representations and Warranties.

(a) Seller represents and warrants to each of the Purchasers as of the Closing Date as follows:

(i) AFG is a Texas limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas. Seller has the power and authority to enter into and perform its obligations under this Agreement. Each of Seller and AFG is duly qualified to do business and is in good standing in each jurisdiction where the failure to so qualify would have an adverse effect on its ability to perform the actions to be performed by it under the Operative Documents to which it is a party.

(ii) This Agreement has been duly authorized by all necessary corporate action on the part of Seller and has been duly executed and delivered by Seller, and the execution, delivery and performance thereof by Seller will not, (x) require any approval of the shareholders of Seller or any approval or consent of any trustee or holder of any indebtedness or obligation of Seller, other than such consents and approvals as have been obtained, (y) contravene any Applicable Law binding on Seller or (z) contravene or result in any breach of or constitute any default under Seller's articles of organization, operating agreement or other organizational and governing documents, or any indenture, judgment, order, mortgage, loan agreement, contract, partnership or joint venture agreement, lease or other agreement or instrument to which Seller is a party or by which Seller is bound, or result in the creation of any Lien (other than pursuant to the Operative Documents) upon any of the property of Seller. The actions to be performed by AFG hereunder and the deliveries required of AFG hereunder will not (x) require any approval of the partners of AFG or any approval or consent of any trustee or holder of any indebtedness or obligation of AFG, other than such consents and approvals as have been obtained, (y) contravene any Applicable Law binding on AFG or (z) contravene or result in any breach of or constitute any default under AFG's partnership agreement or other organizational and governing documents, or any indenture, judgment, order, mortgage, loan agreement, contract, partnership or joint venture agreement, lease or other agreement or instrument to which AFG is a party or by which AFG is bound, or result in the creation of any Lien (other than pursuant to the Operative Documents) upon any property of AFG.

(iii) All Governmental Action required in connection with the execution, delivery and performance by Seller of the Operative Documents to which it is a party, has been or will have been obtained, given or made as of the Closing Date. All Governmental Action required in connection with the performance of the actions required

by, and deliveries to be made by, AFG hereunder have been or will have been obtained, given or made as of the Closing Date.

(iv) Each of the Operative Documents to which Seller is or is to become a party constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights in general. Any deliveries required to be made by AFG hereunder will constitute the legal, valid and binding obligation of AFG, enforceable against AFG in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights in general.

(v) Neither Seller nor AFG is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(vi) Neither Seller nor AFG has offered any interest in the Property, or any similar securities of Seller or AFG to, or solicited any offer to acquire any of the same from, any Person, in violation of Section 5 of the Securities Act, nor has it authorized any Person to take any such action, and neither Seller nor AFG has taken any action that would subject any interest in the Property, the Head Lease, or the Lease to the registration requirements of Section 5 of the Securities Act. Nothing herein is intended to imply or shall be construed to suggest that the interests in Seller or AFG constitute securities.

(vii) No bankruptcy, reorganization, arrangement or insolvency proceedings are pending, threatened or contemplated by Seller, and Seller has not made a general assignment for the benefit of creditors. No bankruptcy, reorganization, rearrangement or insolvency proceedings are pending, threatened or contemplated by AFG, and AFG has not made a general assignment for the benefit of creditors.

(viii) Neither Seller nor AFG is a foreign person within the meaning of Section 1445 of the Internal Revenue Code as amended.

(b) Lessee represents and warrants to each of the Purchasers as of the Closing Date as follows:

(i) All representations and warranties contained in the Lease relating to environmental matters, including without limitation compliance with Environmental Laws, and Hazardous Materials with respect to the Property are true and correct as of the date hereof.

(ii) No bankruptcy, reorganization, arrangement or insolvency proceedings are pending, threatened or contemplated by Lessee and Lessee has not made a general assignment for the benefit of creditors.

(iii) Lessee is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code, as amended.

(iv) No part of the Property has been taken in Condemnation, eminent domain or like proceeding nor is any such proceeding pending or, to Lessee's Actual Knowledge, threatened.

(c) The representations and warranties set forth herein shall survive the closing.

#### SECTION 5. Representations, Warranties and Covenants of Purchasers.

(a) Each of the Purchasers represents and warrants to Seller as of the Closing Date, with respect to itself and not the other of such Purchasers that:

(i) Lessor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and Head Lessor is a corporation duly organized, validly existing and in good standing under the laws Of the State of North Carolina. Such Purchaser has the power and authority to conduct its business as now conducted and to purchase the property being purchased by it hereunder and to enter into and perform its obligations under the Operative Documents to which it is or is to become a party.

(ii) Each of the Operative Documents to which such Purchaser is a party has been duly authorized by all necessary action on the part of such Purchaser and has been duly executed and delivered by such Purchaser, and the execution, delivery and performance thereof by such Purchaser will not, (x) require any approval of the members or other equity owners of such Purchaser or any approval or consent of any trustee or holder of any indebtedness or obligation of Purchaser, other than such consents and approvals as have been obtained, (y) contravene any Applicable Law binding on such Purchaser or (z) contravene or result in any breach of or constitute any default under such Purchaser's organizational documents, or any indenture, mortgage, loan agreement, contract, partnership or joint venture agreement, lease or other agreement or instrument to which such Purchaser is a party or by which such Purchaser is bound.

(iii) All Governmental Action required in connection with the execution, delivery and performance by such Purchaser of the Operative Documents to which it is a party, has been or will have been obtained, given or made.

(iv) Each of the Operative Documents to which such Purchaser is or will become a party constitutes the legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights in general.

(b) The representations and warranties of each Purchaser in Section 5(a) shall survive the closing.

#### SECTION 6. Indemnification.

(a) Lessee agrees to assume liability for, and to indemnify, protect, defend, save and keep harmless each Purchaser, on an After-Tax Basis, from and against any and all claims, demands, liabilities, costs, expenses (including, without limitation, reasonable attorneys' fees and costs), damages and losses, cause or causes of action and suit or suits of any nature whatsoever arising from any misrepresentation or breach of warranty or covenant by Lessee or Seller in this Agreement or any Closing Document delivered to any party pursuant to this Agreement.

(b) The provisions of this Section 6 will survive the Closing Date and the termination of any or all Operative Documents.

#### SECTION 7. Time and Place of Closing.

The closing shall take place at the offices of Moore & Van Allen, PLLC, 100 North Tryon Street, Charlotte, North Carolina 28202-4003 at 9:00 am on June 1, 2000, or at such other place, at such other time and on such other date as shall be mutually agreed upon by Seller and Purchasers.

#### SECTION 8. Conditions to the Obligations of Purchasers.

The obligations of Purchasers to consummate the transactions described in this Agreement or any other Operative Document are subject to the fulfillment prior to or at the closing of each of the following conditions any of which may be waived by Purchasers. To the extent such conditions precedent require the delivery of any agreement, certificate, instrument, memorandum, legal or other opinion, appraisal, commitment, title insurance commitment, lien report or any other document of any kind or type, such item shall be in form and substance satisfactory to each Purchaser or other intended recipient thereof, in its reasonable discretion; notwithstanding the foregoing, the obligations of each party shall not be subject to any conditions contained in this Section 8 which are required to be performed by such party.

(a) All representations and warranties of Seller under the Operative Documents shall be true and correct in all material respects as of the time of the closing.

(b) The Seller shall have performed or satisfied all of the obligations under this Agreement and the Operative Documents as Seller is required to perform or satisfy pursuant to the provisions of this Agreement and the other Operative Documents which require performance or satisfaction on the Closing Date and each Operative Document shall have been delivered by the parties thereto.

(c) Purchasers and each other intended recipient thereof shall have received the Closing Documents required to be delivered by either member of the Seller Group pursuant to Section 10.

(d) Purchasers and each other intended recipient thereof shall have received a certificate dated the Closing Date, in form and substance reasonably satisfactory to Purchasers and each other intended recipient thereof, from an Authorized Officer of Lessee certifying that all representations and warranties of such party under this Agreement and any other Operative Document to which it is a party are true and correct as of the Closing Date, that Lessee has performed or satisfied all obligations required to be performed or satisfied by it as of the Closing Date and that no default under any Operative Document has occurred and is continuing as of the Closing Date. The Lessor shall have delivered a certificate from an Authorized Officer certifying that all representations and warranties of it under this Agreement and any other Operative Agreement to which it is a party are true and correct as of the Closing Date, that it has performed and satisfied all obligations required to be performed or satisfied by it on the Closing Date and that no default under any Operative Document arising by, through or under it has occurred as of the Closing Date and to its knowledge, no other default under any Operative Document has occurred and is continuing as of the Closing Date.

(e) Each of Lessor and Agent shall have received with respect to the Real Property (i) an owner's policy (or mortgagee's policy, as the case may be) of title insurance on the current extended coverage ALTA form issued by the Title Insurance Company and insuring such Person's good, indefeasible and marketable fee simple title (or Mortgage interest, as the case may be) to the Real Property in an amount equal to the Purchase Price paid therefor, together with such affirmative coverages and endorsements reasonably required by Lessor or Agent, subject only to the Permitted Encumbrances, and (ii) an ALTA survey, certified to each of the Lessor and Agent and the Title Insurance Company by a registered land surveyor, dated not more than six (6) months prior to the Closing Date, for the Real Property, acceptable to each of Lessor and Agent, which survey shall show: (A) the boundaries and legal description of the Real Property, (B) the location of all Improvements, (C) the location of all roadways and other access-ways upon or across the Real Property, (D) the location of all easements and rights-of-way on the Real Property which are of record, visible upon inspection or otherwise known to the Person rendering such survey, (E) the name of each public thoroughfare abutting the Real Property, (F) any encroachments onto adjacent land by Improvements located on the Real Property, (G) any encroachments onto the Real Property by improvements located on adjacent property, (H) no claims, defects or encumbrances other than the Permitted Encumbrances, and (I) such other matters as each of Lessor and Agent may reasonably require.

(1) Each of Lessor, Head Lessor, Agent and each Holder shall have received the Environmental Reports prepared by the Approved Environmental Consultant respecting the Real Property evidencing no pre-existing environmental condition or other environmental matter with respect to the Real Property that is not acceptable to such Person.

(g) Lessor and Agent shall have received with respect to the Real Property an appraisal report prepared by a Qualified Appraiser containing such opinions as shall be required by and acceptable to Lessor and Agent, Head Lessor shall have received with respect to the



Equipment an appraisal report prepared by a Qualified Appraiser containing such opinions as may be required by and acceptable to Head Lessor, and each of Lessor, Head Lessor and Agent shall have received an engineering report with respect to the Property in form and substance reasonably acceptable to each such Person.

(h) Opinions of counsel for Lessee and Lessor, dated the Closing Date, shall have been received, addressed to the appropriate parties to the Operative Documents, from such counsel and containing opinions as to such matters of law as are customary for the transactions contemplated by the Operative Documents and otherwise reasonably required by the intended recipient thereof, such counsel and the form and substance of each opinion to be reasonably acceptable to the intended recipient thereof

(i) A certificate of an Authorized Officer with respect to organizational documents, by-laws, partnership agreement, operating agreement or other governing documents, authorizing resolutions approving the Overall Transaction and the incumbency of the officers executing the Operative Documents shall have been delivered by Lessee and Lessor, all in form and substance reasonably acceptable to the parties to the Operative Documents.

(j) The Title Insurance Company shall have been provided with funds estimated to be sufficient to permit payment of, and arrangements shall have been made with such Title Insurance Company for the payment of, title premiums for each Title Policy and any applicable transfer, stamp, recording, filing and similar taxes, fees and charges with respect to the Closing Documents and the transactions contemplated hereby and thereby.

(k) Head Lessor shall have received the Bill of Sale from the Seller and AFG, which shall be satisfactory to the Head Lessor, and Lessor shall have received a bill of sale related to the Improvements and Fixtures from the Seller and AFG, which shall be satisfactory to Lessor, Agent and Head Lessor.

(l) Lessee shall have delivered a legal opinion in form and substance acceptable to Lessor, Agent and Head Lessor with respect to local law matters respecting the state in which the Property is located from counsel located in the state where such Property is located, such counsel to be acceptable to Lessor, Agent and Head Lessor.

(m) Each of the Lessor, Agent, each Holder and Head Lessor shall be satisfied that the acquisition of the Property and the execution of the Mortgage and the other Operative Documents, including without limitation the Debt Documents, will afford the rights, remedies and benefits intended to be afforded to each such Person under the Operative Documents.

(n) Lessor shall have received the Deed from AFG with respect to the Real Property in such form as shall be acceptable to Lessor and Agent, Agent shall have received the Mortgage in such form as shall be acceptable to Agent and Head Lessor and each other party to any other Operative Document shall have executed and delivered each such Operative Document to which such Person is a party and each other delivery required under any Operative Document shall have been made.

- (o) The Holders shall have provided the proceeds under the Notes to the Lessor to pay the portion of the Purchase Price payable by it in respect of the Real Property.
- (p) Each of Lessor, Agent and Head Lessor shall have received evidence of insurance from Lessee, acceptable to such Person with respect to the Property.
- (q) Each of Lessor, Agent and Head Lessor shall have received (i) Uniform Commercial Code lien searches, tax lien searches and judgment lien searches regarding the Real Property and Equipment in such jurisdictions and against such parties as determined by such Person, in each case performed by a nationally recognized search company acceptable to such Person and (ii) the liens referenced in such lien searches which are objectionable to any such Person shall be either removed or otherwise handled in a manner satisfactory to such Person prior to the Closing Date.
- (r) All taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Documents and/or documents related thereto shall have been paid or provisions for such payment shall have been made to the satisfaction of each of Lessor, Agent and Head Lessor.
- (s) In the opinion of each Participant and their respective counsel, the transactions contemplated by the Operative Documents do not and will not subject such Participant to any adverse regulatory prohibitions, constraints, penalties or fines.
- (t) Each of Lessor and Head Lessor shall have received an assignment of all assignable guaranties and warranties of Lessee with respect to the portion of the Property being acquired by such Person, together with the original of each guaranty and warranty, if available.
- (u) Lessor shall have received copies of the plans and specifications, including without limitation all operational guidelines, renderings, and any other information regarding the Property required by it.
- (v) All leases, subleases, licenses, concessions or other agreements in existence prior to the Closing Date (including the Synthetic Lease) in connection with the Property shall be terminated on or prior to the Closing Date in a manner acceptable to Lessor, Agent and Head Lessor, all amounts payable in connection therewith shall have been indefeasibly paid, all obligations arising in connection therewith shall have been fully satisfied and all releases related to any Liens arising in connection therewith shall have been released and appropriate filings shall have been made; provided, that in the case of the oral license to Werner Enterprises with respect to the portion of the Property known as the Shop Maintenance, a letter shall have been delivered by Werner Enterprises on behalf of the parties to the Operative Documents indicating that its interest in the Property is terminable at will and subject and subordinate in all respects to the interests of the parties arising under the Operative Documents.
- (w) All such further actions shall have been taken and all further deliveries made, including the filing and recording of all documents, instruments and financing statements necessary or beneficial to establish and protect title to the Real Property in Lessor, title to the

Equipment in the Head Lessor and the Lien of the Mortgage in the Agent for the benefit of the Holders free and clear of all Liens, as may be required by any Person a party to any Operative Document, and all such action shall have been taken as any Person a party hereto may reasonably request in connection with the Overall Transaction.

No condition required to be fulfilled under this Section 8 shall be waived except by a writing signed by each Person for whose benefit such condition is required to be satisfied. In addition, and notwithstanding the closing of the transactions contemplated by this Agreement and the other Operative Documents, any condition precedent required to be performed or satisfied by this Section 8 and not performed or satisfied on the Closing Date may be subsequently required to be performed or satisfied by any Person for whose benefit such condition precedent is intended, notwithstanding the closing hereunder.

#### SECTION 9. Conditions to the Obligation of Seller.

The obligation of Seller to consummate the transactions described in this Agreement is subject to the fulfillment prior to or at the closing of each of the following conditions (any of which may be waived by Seller):

- (a) All representations and warranties of each Purchaser hereunder shall be true and correct in all material respects as of the time of the closing.
- (b) Each Purchaser shall have paid or deposited in escrow its portion of the Purchase Price with respect to the portion of the Property being acquired pursuant to Section 3 and shall have performed or satisfied all other obligations under this Agreement it is required to perform pursuant to this Agreement.
- (c) Seller shall have received the Closing Documents required to be delivered by each Purchaser pursuant to Section 10.

#### SECTION 10. Closing Documents.

The parties shall deliver the following documents, all in form and substance reasonably satisfactory to Lessor and Head Lessor and all dated as of the Closing Date (the "Closing Documents"), prior to or at the closing:

- (a) Seller shall execute and deliver, or cause to be executed and delivered as the case may be, the following Closing Documents:
  - (i) the Deed with covenants against grantor's acts with respect to the Real Property, granting and conveying to Lessor good, indefeasible and marketable fee simple title to such Real Property, subject only to the Permitted Encumbrances;
  - (ii) with respect to the Deed, any transfer tax statement, return, affidavit or other document required or requested in connection therewith;

(iii) a copy of the current certificate of occupancy for the Property with all amendments thereto (unless the municipality where the Property is located does not issue or maintain such certificates or their legal equivalent);

(iv) a certification of non-foreign status as required by the Foreign Investment in Real Property Tax Act and regulations thereunder and any similar state statutes;

(v) all environmental transfer or disclosure forms, if any, required by the state or municipality in which the Property is located;

(vi) the Bill of Sale warranting the transfer of good and marketable title to the Equipment free and clear of all Liens and the bill of sale related to Improvements and Fixtures free and clear of all Liens;

(vii) the other documents, certificates, opinions and items referred to in Section 8; and

(viii) such other documents, certificates, affidavits and deliveries as either of the Purchasers may require.

This provision shall survive the closing.

(b) Lessor shall deliver the portion of the Purchase Price related to the Real Property, the Head Lessor shall deliver the portion of the Purchase Price related to the Equipment and each Purchaser shall execute and shall deliver such other instruments and documents and take such other actions, as Purchasers are required to deliver or do hereunder to effectuate the transactions contemplated hereby in accordance with the provisions hereof. This provision shall survive the closing.

#### SECTION 11. Brokerage.

Each of the Lessee and the Purchasers represent and warrant to each other that they have not dealt with any broker, finder, financial adviser or similar Person in connection with the transactions contemplated by this Agreement (other than First Union Securities, Inc.). The provisions of this

Section shall survive the closing and any termination of this Agreement.

#### SECTION 12. Expenses.

Lessee agrees on the Closing Date and subsequent dates as invoices are received by Lessee to pay all costs and expenses relating to the transactions contemplated hereby and by the Operative Documents, including without limitation, the fees and expenses of Seller's legal counsel, the surveyor and all recording, documentation, transfer, filing and recording taxes (other than arising in connection with the Debt Documents), property, liability and title insurance premiums regarding the Property, and 50% of the fees and expenses of local counsel.

### SECTION 13. Notices.

Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be in writing sent to either (i) that Person's Address, and a copy thereof shall be sent to each Person to receive a copy pursuant to the definition of "Address", by a nationally recognized overnight courier service, and any such notice shall be deemed received one (1) Business Day after delivery to a nationally recognized courier service specifying overnight delivery, or (ii) that Person's fax number, and a second copy thereof shall be sent to each Person required to receive a copy pursuant to the definition of "Address", by a nationally recognized overnight courier service, specifying overnight delivery, prepaid, and any such notice shall be deemed received after the earlier of (x) the confirmation of receipt of such fax, or (y) one (1) Business Day after delivered to such courier. From time to time any party may designate a new Address or fax number for purposes of notice hereunder by giving fifteen (15) days' written notice thereof to each of the other parties hereto.

### SECTION 14. No Recording.

Neither party hereto shall record this Agreement or any memorandum hereof except as required by Applicable Law and only upon prior written notice to the other party.

### SECTION 15. Entire Agreement

Except as specified herein, this Agreement, the other Operative Documents and the Closing Documents constitute the entire agreement of the parties with respect to the transactions contemplated hereby and all prior understandings and agreements of the parties with respect to such transactions are merged into this Agreement and the Closing Documents.

### SECTION 16. Modification.

Except as specified herein, no provision of this Agreement shall be modified, waived or terminated, except by an instrument signed by the party against whom such modification, waiver or termination is to be enforced.

### SECTION 17. Parties Bound; Assignment.

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The rights and obligations of any party hereunder may not be assigned or transferred without the consent of the other parties, provided that each of the Purchasers may, without the consent of Seller, assign its rights under this Agreement to any designee provided any such assignment shall not result in the discharge or release of such Purchaser from its obligations to Seller hereunder. Each Participant shall be deemed to be a third-party beneficiary hereof with respect to the conditions precedent to be satisfied hereunder prior to the consummation of the transactions contemplated by this Agreement to the extent that any such Participant is an intended beneficiary of any item to be delivered or action to be taken under Section 8 by any other Person.

SECTION 18. Submission to Jurisdiction.

EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) SUBMITS IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, THE COURTS OF THE UNITED STATES OF AMERICA SITTING IN NEW YORK COUNTY AND APPELLATE COURTS FROM ANY THEREOF; (B) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN ANY SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURTS OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME; (C) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED IN THE MANNER SPECIFIED FOR NOTICES AND OTHER COMMUNICATIONS IN SECTION 13 AND SHALL BE EFFECTIVE AS PROVIDED IN SECTION 13; AND (D) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION OR COURT HAVING JURISDICTION.

SECTION 19. Choice of Law.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED WITHOUT REGARD TO THE CONFLICT-OF-LAW PROVISIONS THEREOF.

SECTION 20. Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

SECTION 21. Counterparts.

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 22. Survival of Documents.

The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Documents, and each party's obligations under any and all thereof, shall survive the execution and delivery of this Agreement, the transfer of the Property (or any portion thereof) to the Purchasers or either of them and shall be and continue in effect

notwithstanding any investigation made by any party and the fact that any party may waive compliance with any of the other terms, provisions, or conditions of any of the Operative Documents. The indemnities of the parties provided for herein shall survive the expiration or termination of any thereof.

SECTION 23. Captions and Headings.

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

SECTION 24. Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 25. Further Assurances.

At Lessee's expense, each party hereto shall promptly and duly execute and deliver to the other party such further documents and promptly take such further action not inconsistent with the terms hereof as the other party may from time to time reasonably request in order more effectively to carry out the intents and purposes of this Agreement or to perfect and protect the rights and remedies intended to be afforded hereunder.

SECTION 26. Several Liability.

Notwithstanding any other provision in this Agreement or any other Operative Document, the obligations of each Purchaser are several and, notwithstanding any joint reference to the Purchasers hereunder, no obligation on the part of any Purchaser is intended to be construed as a joint obligation by the other of such Purchasers.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**Purchasers:**

**FU/DG FULTON, LLC,**  
a Delaware limited liability company

By: /s/ Benjamin F. Williams, Jr.  
-----  
Name: Benjamin F. Williams, Jr.  
-----  
Title: Senior Vice President and  
Managing Director  
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**FIRST UNION COMMERCIAL CORPORATION,**  
a North Carolina corporation

By: /s/ Linda Baxter  
-----  
Name: Linda Baxter  
-----  
Title: Vice President  
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**DOLLAR GENERAL CORPORATION,**  
a Tennessee corporation

By: /s/ Wade Smith  
-----  
Name: Wade Smith  
-----  
Title: Treasurer  
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Sale and Purchase Agreement Missouri



## Schedule I

### Sale and Purchase Agreement

#### Missouri Real Property

A TRACT LOCATED IN THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 47 NORTH, RANGE 9 WEST, THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 47 NORTH, RANGE 9 WEST. ALL IN THE CITY OF FULTON IN CALLAWAY COUNTY, MISSOURI, BEING THE TRACT DESCRIBED BY THE DEED IN BOOK 342 PAGE 125, BOOK 342 PAGE 364, BOOK 342 PAGE 426, BOOK 342 PAGE 157, BOOK 342 PAGE 070, BOOK 344 PAGE 646, BOOK 344 PAGE 735 AND PART OF THE TRACT DESCRIBED BY THE DEED IN BOOK 339 PAGE 400. ALL OF THE CALLAWAY COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 8, THENCE WITH THE NORTH LINE OF SAID SECTION 8 AND THE LINES OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 342 PAGE 125. N 86°35'00"E, 745.45 FEET TO THE NORTHEAST CORNER OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 342 PAGE 125, ALSO BEING THE NORTHWEST CORNER OF THE TRACT DESCRIBED BY THE DEED IN BOOK 304 PAGE 276 OF THE CALLAWAY COUNTY RECORDS; THENCE WITH THE EAST LINE OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 342 PAGE 125 AND BOOK 342 PAGE 157, ALSO BEING THE COMMON LINE OF THE TRACTS DESCRIBED BY THE DEED IN BOOK 304 PAGE 276 AND THE DEED IN BOOK 313 PAGE 522, ALL OF THE CALLOWAY COUNTY RECORDS, S 04° 42'45" E, 1319.90 FEET TO THE QUARTER QUARTER SECTION LINE. ALSO BEING THE SOUTHERN CORNER COMMON TO THE TRACTS DESCRIBED BY SAID DEEDS IN BOOK 342 PAGE 157 AND BOOK 342 PAGE 125; THENCE WITH THE EAST LINE OF THE TRACT DESCRIBED BY THE DEED IN BOOK 344 PAGE 735, S04°42' 45"E, 40.00 FEET TO A POINT ON THE NORTH LINE OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 339 PAGE 400; THENCE WITH THE LINES OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 339 PAGE 400, N 86°32'45"E, 65.75 FEET TO THE NORTHWEST CORNER OF THE TRACT DESCRIBED BY THE DEED IN BOOK 333 PAGE 382 AND THE SURVEY RECORDED IN BOOK AA PAGE 115, ALL OF THE CALLOWAY COUNTY RECORDS; THENCE WITH THE WEST LINE OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 333 PAGE 382 AND SAID SURVEY IN BOOK AA PAGE 115, S04° 22'00"E, 1265. 80 FEET (1272.99 FEET, DEED IN BOOK 333 PAGE 382 AND SAID SURVEY IN BOOK AA PAGE 115) TO THE SOUTHWEST CORNER OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 333 PAGE 382 AND THE SURVEY IN BOOK AA PAGE 115, ALSO BEING THE POINT ON THE QUARTER SECTION LINE AND THE NORTH LINE OF THE TRACT DESCRIBED BY THE DEEDS IN BOOK 136 PAGE 518 AND BOOK 144 PAGE 49, ALL OF THE CALLOWAY COUNTY RECORDS; THENCE WITH SAID QUARTER SECTION LINE AND SAID NORTH LINES S85°15'45"W, 141.70 FEET; THENCE LEAVING SAID QUARTER SECTION LINE AND NORTH LINE AND WITH THE WEST LINE OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 144 PAGE 49, S03°28'30"E, 991.90 FEET TO THE NORTH LINE OF BROOKSIDE DRIVE AS DESCRIBED BY THE DEED IN BOOK 257 PAGE 650 AND THE SURVEY IN BOOK 1 PAGE 955, ALL OF THE CALLOWAY COUNTY RECORDS; THENCE WITH SAID NORTH LINE, S85°58'00"W, 710.65 FEET (710.76 FEET, DEED IN BOOK 257 PAGE 650 AND SURVEY IN BOOK 1 PAGE 955); THENCE S39°56'30"W, 287.15 FEET (287.09 FEET, DEED IN BOOK 257 PAGE 650 AND SURVEY IN BOOK 1 PAGE 955); THENCE S20°14' 00"W, 442.00 FEET (442.32 FEET, DEED IN BOOK 257 PAGE 650 AND SURVEY IN BOOK 1 PAGE 955); THENCE S08°19'15"E, 296.05 FEET; THENCE WITH THE CURVE TO THE LEFT, 185.00 FEET, CURVE RADIUS 543.24 FEET, CHORD S18°04'30"E, 184.10 FEET TO A POINT ON THE NORTH LINE OF THE ILLINOIS CENTRAL GULF RAILROAD RIGHT-OF-WAY; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE OF BROOKSIDE DRIVE AND WITH SAID NORTH RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD, ALONG A NON TANGENT CURVE TO THE LEFT, 2.30 FEET, CURVE RADIUS 1438.55 FEET, CHORD S64° 51'30"W. 2.30 FEET; THENCE S64°48'30"W. 77.25 FEET; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE AND CONTINUING WITH THE LINES OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 339 PAGE 400, N16°03'15"W, 123.55 FEET (132.66 FEET DEED IN BOOK 339 PAGE 400); THENCE N42°33'15"W. 66.00 FEET; THENCE N07°03' 15"W. 52.8 FEET; THENCE N48°33'15"W, 225.72 FEET; THENCE N60°33'15"W, 97.68 FEET; THENCE S74°56'45"W, 132.66 FEET; THENCE N86°03'15"W, 132.66 FEET; THENCE S15°11'45"W 75.24 FEET; THENCE S76°41'45"W. 369.60 FEET; THENCE S68°56'45"W, 254.10 FEET; THENCE SW 83°26'45"W, 199.32 FEET; THENCE N72°37'15", 172.21 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF U.S. HIGHWAY 54 AS DESCRIBED BY THE DEEDS IN BOOK 211 PAGE 345, BOOK 221 PAGES 259, 260 AND 261, BOOK 208 PAGE 443, AND BOOK 344 PAGE 646 ALL OF THE CALLOWAY COUNTY RECORDS; THENCE WITH SAID EAST RIGHT-OF-WAY LINE, BEING THE WEST LINE OF THE TRACT DESCRIBED BY SAID DEEDS IN BOOK 339 PAGE 400, BOOK 342 PAGE 364 AND BOOK 342 PAGE 426, N05°07'00"W, 155.10 FEET; THENCE N12°14'30"W. 201.55 FEET; THENCE N05°07'00"W 1500.00 FEET; THENCE N 08' 15' 55" E, 103.10 FEET; THENCE N 05' 07' 00" W. 1000.00 FEET; THENCE N02°29'15"E, 34.20 FEET; THENCE N02° 52'00"W 120.00 FEET; THENCE N16°25'00"W. 47.10 FEET; THENCE N05°07'00"W. 300.00 FEET; THENCE N19°09'15"W, 103.10 FEET; THENCE N05°07'00"W, 116.20 FEET; THENCE N04°06'45"W, 194.00 FEET; THENCE WITH A NON-TANGENT CURVE TO THE RIGHT, 452.45 FEET, CURVE RADIUS 1784.86 FEET, CHORD N05°09'15"E. 451.25 FEET; THENCE N26°53'15"E, 250.75 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 7. ALSO BEING THE NORTH LINE OF THE TRACT DESCRIBED BY SAID DEEDS IN BOOK 342 PAGE 426 AND BOOK 342 PAGE 125; THENCE LEAVING SAID RIGHT-OF-WAY AND WITH SAID NORTH LINE, N 88°01'00"E, 1873.65 FEET TO THE POINT OF BEGINNING AND CONTAINS 266.15 ACRES.

Acreage: 250(+/-)

Building Size: Original Sq. Ft.; 1,125,576 Office Area, 9,050sf Building Height: 40' max @ parapet, 33' clear under joist, 31' clear under joist girders

Bay Spacing: 50'-6" x 54'-10" & 50' 6'-0" Pallet Height:

Column Weight:

Roof: 45 mil EPDM Mechanically Attached Roof with 1.8 inches of Rigid Insulation on 24 Gauge metal deck and Bar joist.

Type of Construction of Building: Conventional steel with load-bearing tilt-up walls

Number of Offices: 21

Number of Conference Rooms: 2

Number of Breakrooms: 3

Number of Restrooms: 10

Fire Protection System: ESFR wet system with Fire Pump and Tank rated at 135 PSI at 2000 GPM Number of Employee Parking Slots: 354

Number of Trailers Parking Slots: 1172 Number of Dock Doors: 149

Receiving: 60 Shipping: 64, 10 TKO doors w/edge dock levelers Mechanized:

Number of Cross Dock Doors: 18

Number of Non Conveyable Cross Dock Doors: 0

Sale and Purchase Agreement

Description of Equipment -- MO

**Fulton Distribution Center**

Rapistan Model 2420-RS200 Plus Positive Sorter Equipped  
Sort  
View and Rapid View Control Systems

**32 Model 3020 Powered Extendable Trailer Loads**

**4 Stuart Glapak Powered Extendable Receiving Conveyors**

Estimate over 21,750 of Model 1,276 feet of Transportation  
Seven Sorter Conveyors

Sale and Purchase A~reemcnI  
Description of Equipment-- MO

**DOLLAR GENERAL CORPORATION  
MISSOURI DISTRIBUTION CENTER**

**SELECTIVE PALLET RACK**

**THE BASIC SPECIFICATION FOR THE SELECTIVE PALLET RACK IS TO STORE 48" X 40" X 68" HIGH PALLETS WEIGHING 2.308# AND STACKED 5 HIGH INCLUDING THE FLOOR.**

**THE COMPONENTS ARE AS FOLLOWS:**

- o 468 UPRIGHTS- 30' X 44" -- WITH INTEGRATED STRADDLE PROTECTOR  
CAPACITY -2 ANCHORS PER UPRIGHT,  
18,464# -- 3" X 3" -- 12 GA. STEEL VERTICALS.
- o 6.361 UPRIGHTS 26' X 44" -- WITH INTEGRATED STRADDLE  
CAPACITY PROTECTOR -2 ANCHORS PER UPRIGHT.  
18.464# -- 3"x 3--12 GA. STEEL VERTICALS
- o 48.656 PALLET BEAMS -- 96" X 4 3/16" -- 16 GA. WITH 1 5/8" STEP.  
CAPACITY 5,268#/PR.
- o 112 PALLET BEAMS -- 48"X 4 3/16" 16 GA. with 1 5/8" STEP  
CAPACITY 6,000#/PR.

o 2,987 PALLET BEAMS -- 145 1/2 X 6" -- 12 GA. WITH 1 5/8" STEP CAPACITY 9,000#/PR.

o 4,106 ROW SPACERS -- 10"

o 1,930 ROW SPACERS --14"

o 130 ROW SPACERS -- 32"

o 13,660 FLOOR SHIMS

o 14,320 FLOOR ANCHORS -- 1/2" X 3 3/4"

o THIS BILL OF MATERIAL WILL PROVIDE 65,889 PALLET POSITIONS.

**DOLLAR GENERAL CORPORATION**

**MISSOURI DISTRIBUTION CENTER**

**SELECTIVE PALLET RACK - CONTINUED**

**CONTAINMENT ROOM PICK MODULES**

o 48 UPRIGHTS-- 26' X 44" -- WITH INTEGRATED STRADDLE CAPACITY PROTECTOR -- 2 ANCHORS PER UPRIGHT.

18,464#-3" X 3" 12 GA. STEEL VERTICALS.

- o 48 UPRIGHTS-- 8' X 44"- 2 ANCHORS PER UPRIGHT.  
CAPACITY 12,000#3" X 1 5/8" -- 13 GA. STEEL VERTICALS.
- o 184 PALLET FLOW RAILS -- 94"W/100#1.9" WHEELS 2" O.C.
- o 460 PALLET BEAMS-- 96" X 4 3/16" -- 16 GA. WITH 1 5/8" STEP.  
CAPACITY 5,268#/PR.
- o 92 PALLET BEAMS-- INFINITELY ADJUSTABLE -- 96" X 4 3/16"  
CAPACITY 5,268#/PR.
- o 48 ROW SPACES -- 10"
- o 190 FLOOR SHIMS

o 190 FLOOR ANCHORS -- 1/2"X3/4"

**DOLLAR GENERAL CORPORATION  
MISSOURI DISTRIBUTION CENTER**

**FULL CASE PICK MODULES #1, 9 & 11**

**4 HIGH X 3 DEEP -- 32 BAYS LONG**

- o 32 -- 99" LONG BAYS WITH 4 " UPRIGHTS AND 95" BEAMS. O.A.L. -- 264'4'
- o 3 MODULES -- 96 BAYS TOTAL
- o 8'8" WIDE DECK SUPPORTED 32" O.C.
- o DECK CONSISTS OF 1 1/8" TONGUE AND GROOVE PLYWOOD LAMINATED WITH .100" GRAY TEXTURED POLYETHYLENE ON THE TOP SIDE AND WHITE LAMINATED UNDERSIDE.
- o PALLET FLOW SYSTEM CONSISTS OF 3 RAILS, ALL WITH 100# 1.9" WHEELS, ANTI-ROLLBACK DEVICE AND RAMP STOPS. THE 2 OUTSIDE RAILS WILL HAVE WHEELS 2" O.C. AND THE MIDDLE RAIL WILL HAVE WHEELS 3" O.C.
- o ALL PICK LEVELS ABOVE THE FINISHED FLOOR WILL HAVE 1" X 1/8" BARGRATE SECURED BETWEEN AND BESIDE THE PALLET FLOW RAILS COVERING THE 2 INSIDE PALLET POSITIONS.
- o STAIRWAYS ARE INSTALLED AT EACH END.
- o ALL NECESSARY HANDRAILS AND KICKPLATES ARE INCLUDED.
- o 4" X 4" X 1/4" INTEGRATED COLUMN PROTECTORS ON FORK TRUCK AISLE ARE INCLUDED MODIFICATIONS TO 2 BAYS AT THE END OF EACH MODULE TO ACCOMMODATE SPIRAL CURVES ARE INCLUDED.

	PER MODULE	TOTAL
PICK SLOTS	444	1332
PALLET RETURNS	32	96
	---	----
TOTAL	476	1428

**Description of Equipment -- MO**

**DOLLAR GENERAL CORPORATION  
MISSOURI DISTRIBUTION CENTER**

**FULL CASE PICK MODULES #2, 10 & 12**

**4 HIGH X 3 DEEP -- 33 BAYS LONG**

- o 33--99" LONG BAYS WITH 4" UPRIGHTS AND 95" BEAMS. O.A.L. -- 272'7"
- o 3 MODULES -- 99 BAYS TOTAL
- o 8'8" WIDE DECK SUPPORTED 32" O.C.
- o DECK CONSISTS OF 1 1/8" TONGUE AND GROOVE PLYWOOD LAMINATED WITH .100" GRAY TEXTURED POLYETHYLENE ON THE TOP SIDE AND WHITE LAMINATED UNDERSIDE.
- o PALLET FLOW SYSTEM CONSISTS OF 3 RAILS, ALL WITH 100# 1.9" WHEELS. ANTI-ROLLBACK DEVICE AND RAMP STOPS. THE 2 OUTSIDE RAILS WILL HAVE WHEELS, 2" O.C. AND THE MIDDLE RAIL WILL HAVE WHEELS 3" O.C.
- o ALL PICK LEVELS ABOVE THE FINISHED FLOOR WILL HAVE 1" X 1/8" BARGRATE SECURED BETWEEN AND BESIDE THE PALLET FLOW RAILS COVERING THE 2 INSIDE PALLET POSITIONS.
- o STAIRWAYS ARE INSTALLED AT EACH END.
- o ALL NECESSARY HANDRAILS AND KICKPLATES ARE INCLUDED.
- o 4" X 4" X 1/4" INTEGRATED COLUMN PROTECTORS ON FORK TRUCK AISLE ARE INCLUDED MODIFICATIONS TO 2 BAYS AT THE END OF EACH MODULE TO ACCOMMODATE SPIRAL CURVES ARE INCLUDED.

	PER MODULE	TOTAL
PICK SLOTS	460	1380
PALLET RETURNS	32	96
	---	----
TOTAL	492	1476

**DOLLAR GENERAL CORPORATION  
MISSOURI DISTRIBUTION CENTER**

**FULL CASE PICK MODULES #5 & 7**

**3 HIGH X 3 DEEP -- 32 BAYS LONG**

- o 32 -- 99" LONG BAYS WITH 4" UPRIGHTS AND 95" BEAMS. O.A.L. -- 264'4"
- o UPRIGHT CAPACITY AND HEIGHT SIZED FOR FUTURE 4TH LEVEL
- o 2 MODULES -- 64 BAYS TOTAL
- o 8'S" WIDE DECK SUPPORTED 32" O.C.
- o DECK CONSISTS OF 1 1/8" TONGUE AND GROOVE PLYWOOD LAMINATED WITH .100" GRAY TEXTURED POLYETHYLENE ON THE TOP SIDE AND WHITE LAMINATED UNDERSIDE.
- o PALLET FLOW SYSTEM CONSISTS OF 3 RAILS, ALL WITH I00# 1.9" WHEELS, ANTI-ROLLBACK DEVICE AND RAMP STOPS. THE 2 OUTSIDE RAILS WILL HAVE WHEELS 2" O.C. AND THE MIDDLE RAIL WILL HAVE WHEELS 3" O.C.
- o ALL PICK LEVELS ABOVE THE FINISHED FLOOR WILL HAVE 1" X 1/8" BARGRATE SECURED BETWEEN AND BESIDE THE PALLET FLOW RAILS COVERING THE 2 INSIDE PALLET POSITIONS.
- o STAIRWAYS ARE INSTALLED AT EACH END.
- o ALL NECESSARY HANDRAILS AND KICKPLATES ARE INCLUDED.
- o 4" X 4" X 1/4" INTEGRATED COLUMN PROTECTORS ON FORK TRUCK AISLE ARE INCLUDED
- o MODIFICATIONS TO 2 BAYS AT THE END OF EACH MODULE TO ACCOMMODATE SPIRAL CURVES ARE INCLUDED.

	PER MODULE	TOTAL
PICK SLOTS	333	666
PALLET RETURNS	24	48
	---	---
TOTAL	357	714



**Sale and Purchase Agreement Description of Equipment-- MO**

**DOLLAR GENERAL CORPORATION  
MISSOURI DISTRIBUTION CENTER**

**FULL CASE PICK MODULES #6 & 8**

**3 HIGH X 3 DEEP -- 33 BAYS LONG**

- o 33-99" LONG BAYS WITH 4" UPRIGHTS AND 95" BEAMS. O.A.L -- 272'6"
- o UPRIGHT CAPACITY AND HEIGHT SIZED FOR FUTURE 4TH LEVEL
- o 2 MODULES -- 66 BAYS TOTAL
- o 8'8" WIDE DECK SUPPORTED 32" O.C.
- o DECK CONSISTS OF 1 1/8" TONGUE AND GROOVE PLYWOOD LAMINATED WITH .100" GRAY TEXTURED POLYETHYLENE ON THE TOP SIDE AND WHITE LAMINATED UNDERSIDE.
- o PALLET FLOW SYSTEM CONSISTS OF 3 RAILS, ALL WITH 100# 1.9" WHEELS, ANTI-ROLLBACK DEVICE AND RAMP STOPS. THE 2 OUTSIDE RAILS WILL HAVE WHEELS 2" O.C. AND THE MIDDLE RAIL WILL HAVE WHEELS 3" O.C.
- o ALL PICK LEVELS ABOVE THE FINISHED FLOOR WILL HAVE 1" X 1/8" BARGRATE SECURED BETWEEN AND BESIDE THE PALLET FLOW RAILS COVERING THE 2 INSIDE PALLET POSITIONS.
- o STAIRWAYS ARE INSTALLED AT EACH END.
- o ALL NECESSARY HANDRAILS AND KICKPLATES ARE INCLUDED.
- o 4" X 4" X 1/4" INTEGRATED COLUMN PROTECTORS ON FORK TRUCK AISLE ARE INCLUDED MODIFICATIONS TO 2 BAYS AT THE END OF EACH MODULE TO ACCOMMODATE SPIRAL CURVES ARE INCLUDED.

	PER MODULE	TOTAL
PICK SLOTS	345	690
PALLET RETURNS	24	48
	---	---
TOTAL	369	738

**DOLLAR GENERAL CORPORATION  
MISSOURI DISTRIBUTION CENTER**

**PICK MODULE #3-3 LEVEL REPACK MODULE**

- o 29-99" LONG BAYS WITH 3" UPRIGHTS AND 96" BEAMS. O.A.L. -- 239'6"
- o 12'6" WIDE CENTER AISLE SUPPORTED 24" O.C.
- o 2 -- 7'10" WIDE STOCKING AISLES SUPPORTED 24" O.C.
- o 25 MERCHANDISE RECEIVING PORTS -- 3 LEVELS @ 5 PER LEVEL, EXCEPT FOR PALLET FLOW SECTION.
- o DECK CONSISTS OF 1 1/8" TONGUE AND GROOVE PLYWOOD LAMINATED WITH .100" GRAY TEXTURED POLYETHYLENE ON THE TOP SIDE AND WHITE LAMINATED UNDERSIDE.
- o 485 CARTON FLOW SHELVES -- 2425 PICK SLOTS WITH 5 POSITIONS PER TRAY.
- o CARTON FLOW TRAYS ARE 96" X 96", WITH 4 LEVELS PER OPENING AND 15 TRACKS PER SHELF, EXCEPT FOR ONE SIDE OF THE LOWER LEVEL WHICH WILL HAVE 3 LEVELS OF SHELVES. DIVIDERS ARE NOT INCLUDED OR RECOMMENDED. 155 EXTRA TRACKS ARE INCLUDED.
- o 44 PALLET FLOW PICK SLOTS AND/OR PALLET RETURNS ON 3 RAILS, ALL WITH I00# 1.9" WHEELS 2" O.C., ANTI-ROLLBACK DEVICE AND RAMP STOPS.
- o STAIRWAYS ARE SUPPLIED IN EACH CORNER.
- o 4" X 3" X 1/4" INTEGRATED COLUMN PROTECTORS IN FORKTRUCK AISLE ARE INCLUDED
- o ALL NECESSARY HANDRAILS AND KICKPLATES ARE INCLUDED 770 WIRE DECKS- INTERNAL WATERFALL STYLE ARE INCLUDED.

**DOLLAR GENERAL CORPORATION  
MISSOURI DISTRIBUTION CENTER**

**INSTALL DRIVE-IN RACK**

PALLET POSITIONS	
SLAPPER LINE	1100
110 BAYS 5 HIGH X 2 DEEP	
CONTAINMENT ROOM	
67 BAYS 3 HIGH X 2 DEEP	384
	----
TOTAL	1484
	====

FULL CASE PICK MODULE SUMMARY

NUMBER OF MODULES	10
GROSS NUMBER OF SLOTS	4356
PALLET RETURNS	288
NUMBER OF PICK SLOTS	4068

STORAGE CAPACITY SUMMARY

SELECTIVE PALLET RACK	65,889
CONTAINMENT ROOM PICK MODULES	276
MODULE #3	320
DRIVE-IN RACK	1,484
	-----
TOTAL	67.969
	=====

RATIO OF FULL CASE PICK SLOTS	
TOTAL PALLET CAPACITY	16.7:1

# Sale and Purchase Agreement Description of Equipment -- MO

## FULTON DISTRIBUTION CENTER

COMPONENTS	COMPONENT DESCRIPTIONS
WMS-- RS/6000 Hardware	These computers run the Warehouse Management System (WMS) application software. Application software provides inventory control, generates and distributes tasks related to receiving, replenishments, picking and shipping.
PTL -- RS/6000 Hardware	Hardware used to support the Pick-to-Light system.
Radio Frequency (RF) Equipment	Wireless display and keypad/scanner interface devices used to guide the warehouse workers to necessary work and receive acknowledgements from user for work completed.
OCE Printing Solution	Printers and print servers used to produce want lists and pick/ship labels.
PC's for office areas	Used to interface with WMS and corporate computer systems.
HP Laser printers	For office use.
Line printers and print servers	1000 line/minute impact printers used for receiving, shipping and analytical reporting. Bar-code enabled to allow printing of location and storage tracking labels.
Cubiscan	Used to capture weights and dimensions for case and units being received into the warehouse. Measurements are passed back to WMS to provide cube and dimension data.
Zebra printers	Used to reprint bar-coded rack labels.
IBM Display terminals	Terminal screens used in the warehouse to retrieve data and communicate with the WMS computer system.
Network H/W, S/W (NT) Servers	Network equipment that allows communication within the DC and from the DC to corporate (LAN and WAN).

**Exhibit A**

**Sale and Purchase Agreement**

**Missouri**

Those matters shown on Schedule B Section II of Old Republic Title Insurance Company Title Commitment Order Number C00030255K.

Suntrust Bank  
Mail Code NA 1937  
Post Office Box 305110  
Nashville, TN 37230-6110  
Tel (616) 748-5715  
Fax (615) 748-5269

Scott T. Corley  
Vice President  
Corporate and Investment Banking

SUNTRUST

May 22, 2000

Dollar General Corporation  
100 Mission Ridge  
Goodlettsville, TN 37072

Old Republic National Title Insurance Company 201 4th Avenue North  
Suite 150  
Nashville, TN 37219

**To Whom It May Concern:**

As of May 22,2000, the amount of money owed by Dollar General Corporation to SunTrust Bank in support of the Indianola, MS and Fulton, MO distribution centers is as follows:

Notes	Principal Amount	Accrued Interest	Per Diem Interest
A Notes	\$ 86,512,730.81	\$335,585.28	\$ 15,253.87
B Notes	\$ 11,704,663.58	\$ 45,402.71	\$ 2,063.76
Equity	\$ 3,562,288.91	\$ 15,668.29	\$ 712.21
Total	\$101,779,683.30	\$396,656.28	

Upon receipt of the appropriate proceeds, SunTrust Bank will release all liens relating to property and equipment of the Indianola, MS and Fulton, MO distribution centers.

Sincerely,

*/s/ Scott Corley*

-----  
*Scott Corley*  
*Director*

**SALE AND PURCHASE AGREEMENT**

**Dated as of June 1, 2000**

among

**DOLLAR GENERAL CORPORATION,  
as Lessee and as Seller**

and

**FU/DG INDIANOLA, LLC,  
as Lessor**

**FIRST UNION COMMERCIAL CORPORATION,  
as Head Lessor**

Property:  
U.S. Highway 82  
Indianola, Mississippi  
Sunflower County

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SALE AND PURCHASE AGREEMENT (this "Agreement") dated as of June 1, 2000 among FU/DG INDIANOLA, LLC, a Delaware limited liability company, having its principal place of business at First Union Securities, 301 South College Street -- NC0166, Charlotte, NC 28288-0166 (the "Lessor"), FIRST UNION COMMERCIAL CORPORATION, a North Carolina corporation having its principal place of business at One First Union Center, 301 South College Street, 20th Floor, Charlotte, North Carolina 28288 (the "Head Lessor" and together with the Lessor, the "Purchasers"), and DOLLAR GENERAL CORPORATION, a Tennessee corporation, ("Lessee" or "Seller"), having its principal place of business at 100 Mission Ridge, Goodlettsville, Tennessee 37072.

**WITNESSETH:**

**RECITALS**

WHEREAS, Atlantic Financial Group, Ltd., a Texas limited partnership ("AFG") is the legal owner of the parcels of land described on Schedule I hereto, together with all rights of way, easements, strips, gores, alleys, servitudes, licenses, rights, benefits, oil, gas, water, mineral and air rights, tenements, hereditaments and appurtenances belonging or pertaining to such parcels of land (the "Land") and all of the buildings, structures, other improvements and fixtures now located on the Land (the "Improvements"; the Land and the Improvements thereon being the "Real Property"), which Real Property is subject to the Permitted Encumbrances set forth on Exhibit A attached hereto; and

WHEREAS, AFG is also the owner of the racks, conveyors and other equipment described on Schedule II (the "Equipment," and together with the Real Property, the "Property");

WHEREAS, AFG is leasing the Property to Lessee pursuant to a synthetic lease (the "Synthetic Lease");

WHEREAS, on the terms and provisions herein, Seller wishes to sell or cause the sale of the Real Property to the Lessor and the Equipment to the Head Lessor;

WHEREAS, pursuant to this Agreement, the Head Lessor and the Head Lessee will execute the Head Lease of even date herewith providing for the lease of the Equipment by the Head Lessor to the Head Lessee, and the Lessor and the Lessee will execute the Lease dated of even date herewith providing for the lease of the Property by the Lessor to the Lessee.

NOW, THEREFORE, in consideration of the premises, in consideration of the covenants and provisions herein and other good and valuable consideration, and intending to be bound hereby, the parties hereto agree as follows:

## SECTION 1. Definitions.

The capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in Appendix A to that certain Lease Agreement dated as of the date hereof between Head Lessee in its capacity as Lessor thereunder and Dollar General Corporation, a Tennessee corporation, as lessee (the "Lessee") or the other relevant Operative Documents defining such terms, and all rules of usage set forth in Appendix A shall apply.

"Assignment of Lease" shall mean the Lease Assignment and Agreement dated as of June 1, 2000, by and among the Lessor, as assignor, and the Agent, as assignee, for the benefit of the Holders and the Head Lessor, as their interests may appear in accordance with the Intercreditor Agreement, with respect to the Lease.

"Bill of Sale" shall mean a bill of sale with respect to the Equipment, in form and substance acceptable to Head Lessor, to be delivered to Seller to Head Lessor under the Purchase Agreement upon satisfaction of the conditions precedent set forth therein.

"Closing Date" shall mean the date on which the Real Property is acquired by the Lessor and the Equipment is acquired by the Head Lessor.

"Deed" shall mean that special or limited warranty deed to be delivered to Lessor by AFG under the Purchase Agreement upon satisfaction of the conditions precedent set forth therein, such Deed to be in form and substance acceptable to the Lessor.

"Environmental Reports" shall mean the reports and information covering the Property prepared by the Approved Environmental Consultant.

## SECTION 2. Agreement to Sell, Purchase and Lease.

Subject to the provisions and conditions of this Agreement, on the Closing Date, (i) Seller shall cause AFG and Seller (the "Seller Group") to sell, assign and convey to the Lessor and the Lessor shall purchase from the Seller Group the Real Property free and clear of all Liens, encumbrances, claims, defects and other exceptions to the title in the Property, subject only to the Permitted Encumbrances, (ii) Seller shall cause the Seller Group to sell, assign and convey to Head Lessor and Head Lessor shall purchase from the Seller Group the Equipment free and clear of all liens, encumbrances, claims, defects and other exceptions to title, (iii) Head Lessor shall lease to Head Lessee and Head Lessee shall lease from Head Lessor the Equipment under and pursuant to the Head Lease, and (iv) Lessor shall lease to Lessee and Lessee shall lease from Lessor the Property under and pursuant to the Lease.

## SECTION 3. Purchase Price.

The purchase price (the "Purchase Price") for the Real Property shall be as follows:

- (a) Payable by the Head Lessor for the Equipment in the amount of \$14,003,053.00;
- (b) Payable by the Lessor for the Real Property in the amount of \$26,978,891.00;

(c) Upon satisfaction of the conditions set forth herein, the portion of the Purchase Price payable by each of the Head Lessor and the Lessor shall be payable to Seller on the Closing Date by wire or intrabank transfer of immediately available funds to Seller or its designee at First Union National Bank, Account No. 202 0000451297, ABA 053000219, Ref.: Dollar General (Loan # 37-4000001), Attn: Lisa Traylor or such other account as Seller may designate not less than three (3) Business Days before the Closing Date.

#### SECTION 4. Representations and Warranties.

(a) Seller represents and warrants to each of the Purchasers as of the Closing Date as follows:

(i) AFG is a Texas limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas. Seller has the power and authority to enter into and perform its obligations under this Agreement. Each of Seller and AFG is duly qualified to do business and is in good standing in each jurisdiction where the failure to so qualify would have an adverse effect on its ability to perform the actions to be performed by it under the Operative Documents to which it is a party.

(ii) This Agreement has been duly authorized by all necessary corporate action on the part of Seller and has been duly executed and delivered by Seller, and the execution, delivery and performance thereof by Seller will not, (x) require any approval of the shareholders of Seller or any approval or consent of any trustee or holder of any indebtedness or obligation of Seller, other than such consents and approvals as have been obtained, (y) contravene any Applicable Law binding on Seller or (z) contravene or result in any breach of or constitute any default under Seller's articles of organization, operating agreement or other organizational and governing documents, or any indenture, judgment, order, mortgage, loan agreement, contract, partnership or joint venture agreement, lease or other agreement or instrument to which Seller is a party or by which Seller is bound, or result in the creation of any Lien (other than pursuant to the Operative Documents) upon any of the property of Seller. The actions to be performed by AFG hereunder and the deliveries required of AFG hereunder will not (x) require any approval of the partners of AFG or any approval or consent of any trustee or holder of any indebtedness or obligation of AFG, other than such consents and approvals as have been obtained, (y) contravene any Applicable Law binding on AFG or (z) contravene or result in any breach of or constitute any default under AFG's partnership agreement or other organizational and governing documents, or any indenture, judgment, order, mortgage, loan agreement, contract, partnership or joint venture agreement, lease or other agreement or instrument to which AFG is a party or by which AFG is bound, or result in the creation of any Lien (other than pursuant to the Operative Documents) upon any property of AFG.

(iii) All Governmental Action required in connection with the execution, delivery and performance by Seller of the Operative Documents to which it is a party, has been or will have been obtained, given or made as of the Closing Date. All Governmental Action required in connection with the performance of the actions required

by, and deliveries to be made by, AFG hereunder have been or will have been obtained, given or made as of the Closing Date.

(iv) Each of the Operative Documents to which Seller is or is to become a party constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights in general. Any deliveries required to be made by AFG hereunder will constitute the legal, valid and binding obligation of AFG, enforceable against AFG in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights in general.

(v) Neither Seller nor AFG is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(vi) Neither Seller nor AFG has offered any interest in the Property, or any similar securities of Seller or AFG to, or solicited any offer to acquire any of the same from, any Person, in violation of Section 5 of the Securities Act, nor has it authorized any Person to take any such action, and neither Seller nor AFG has taken any action that would subject any interest in the Property, the Head Lease, or the Lease to the registration requirements of Section 5 of the Securities Act. Nothing herein is intended to imply or shall be construed to suggest that the interests in Seller or AFG constitute securities.

(vii) No bankruptcy, reorganization, arrangement or insolvency proceedings are pending, threatened or contemplated by Seller, and Seller has not made a general assignment for the benefit of creditors. No bankruptcy, reorganization, rearrangement or insolvency proceedings are pending, threatened or contemplated by AFG, and AFG has not made a general assignment for the benefit of creditors.

(viii) Neither Seller nor AFG is a foreign person within the meaning of Section 1445 of the Internal Revenue Code as amended.

(b) Lessee represents and warrants to each of the Purchasers as of the Closing Date as follows:

(i) All representations and warranties contained in the Lease relating to environmental matters, including without limitation compliance with Environmental Laws, and Hazardous Materials with respect to the Property are true and correct as of the date hereof.

(ii) No bankruptcy, reorganization, arrangement or insolvency proceedings are pending, threatened or contemplated by Lessee and Lessee has not made a general assignment for the benefit of creditors.

(iii) Lessee is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code, as amended.

(iv) No part of the Property has been taken in Condemnation, eminent domain or like proceeding nor is any such proceeding pending or, to Lessee's Actual Knowledge, threatened.

(c) The representations and warranties set forth herein shall survive the closing.

#### SECTION 5. Representations, Warranties and Covenants of Purchasers.

(a) Each of the Purchasers represents and warrants to Seller as of the Closing Date, with respect to itself and not the other of such Purchasers that:

(i) Lessor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and Head Lessor is a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina. Such Purchaser has the power and authority to conduct its business as now conducted and to purchase the property being purchased by it hereunder and to enter into and perform its obligations under the Operative Documents to which it is or is to become a party.

(ii) Each of the Operative Documents to which such Purchaser is a party has been duly authorized by all necessary action on the part of such Purchaser and has been duly executed and delivered by such Purchaser, and the execution, delivery and performance thereof by such Purchaser will not, (x) require any approval of the members or other equity owners of such Purchaser or any approval or consent of any trustee or holder of any indebtedness or obligation of Purchaser, other than such consents and approvals as have been obtained, (y) contravene any Applicable Law binding on such Purchaser or (z) contravene or result in any breach of or constitute any default under such Purchaser's organizational documents, or any indenture, mortgage, loan agreement, contract, partnership or joint venture agreement, lease or other agreement or instrument to which such Purchaser is a party or by which such Purchaser is bound.

(iii) All Governmental Action required in connection with the execution, delivery and performance by such Purchaser of the Operative Documents to which it is a party, has been or will have been obtained, given or made.

(iv) Each of the Operative Documents to which such Purchaser is or will become a party constitutes the legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights in general.

(b) The representations and warranties of each Purchaser in Section 5(a) shall survive the closing.

#### SECTION 6. Indemnification.

(a) Lessee agrees to assume liability for, and to indemnify, protect, defend, save and keep harmless each Purchaser, on an After-Tax Basis, from and against any and all claims, demands, liabilities, costs, expenses (including, without limitation, reasonable attorneys' fees and costs), damages and losses, cause or causes of action and suit or suits of any nature whatsoever arising from any misrepresentation or breach of warranty or covenant by Lessee or Seller in this Agreement or any Closing Document delivered to any party pursuant to this Agreement.

(b) The provisions of this Section 6 will survive the Closing Date and the termination of any or all Operative Documents.

#### SECTION 7. Time and Place of Closing.

The closing shall take place at the offices of Moore & Van Allen, PLLC, 100 North Tryon Street, Charlotte, North Carolina 28202-4003 at 9:00 am on June 1, 2000, or at such other place, at such other time and on such other date as shall be mutually agreed upon by Seller and Purchasers.

#### SECTION 8. Conditions to the Obligations of Purchasers.

The obligations of Purchasers to consummate the transactions described in this Agreement or any other Operative Document are subject to the fulfillment prior to or at the closing of each of the following conditions any of which may be waived by Purchasers. To the extent such conditions precedent require the delivery of any agreement, certificate, instrument, memorandum, legal or other opinion, appraisal, commitment, title insurance commitment, lien report or any other document of any kind or type, such item shall be in form and substance satisfactory to each Purchaser or other intended recipient thereof, in its reasonable discretion; notwithstanding the foregoing, the obligations of each party shall not be subject to any conditions contained in this Section 8 which are required to be performed by such party.

(a) All representations and warranties of Seller under the Operative Documents shall be true and correct in all material respects as of the time of the closing.

(b) The Seller shall have performed or satisfied all of the obligations under this Agreement and the Operative Documents as Seller is required to perform or satisfy pursuant to the provisions of this Agreement and the other Operative Documents which require performance or satisfaction on the Closing Date and each Operative Document shall have been delivered by the parties thereto.

(c) Purchasers and each other intended recipient thereof shall have received the Closing Documents required to be delivered by either member of the Seller Group pursuant to Section 10.

(d) Purchasers and each other intended recipient thereof shall have received a certificate dated the Closing Date, in form and substance reasonably satisfactory to Purchasers and each other intended recipient thereof, from an Authorized Officer of Lessee certifying that all representations and warranties of such party under this Agreement and any other Operative Document to which it is a party are true and correct as of the Closing Date, that Lessee has performed or satisfied all obligations required to be performed or satisfied by it as of the Closing Date and that no default under any Operative Document has occurred and is continuing as of the Closing Date. The Lessor shall have delivered a certificate from an Authorized Officer certifying that all representations and warranties of it under this Agreement and any other Operative Agreement to which it is a party are true and correct as of the Closing Date, that it has performed and satisfied all obligations required to be performed or satisfied by it on the Closing Date and that no default under any Operative Document arising by, through or under it has occurred as of the Closing Date and to its knowledge, no other default under any Operative Document has occurred and is continuing as of the Closing Date.

(e) Each of Lessor and Agent shall have received with respect to the Real Property (i) an owner's policy (or mortgagee's policy, as the case may be) of title insurance on the current extended coverage ALTA form issued by the Title Insurance Company and insuring such Person's good, indefeasible and marketable fee simple title (or Mortgage interest, as the case may be) to the Real Property in an amount equal to the Purchase Price paid therefor, together with such affirmative coverages and endorsements reasonably required by Lessor or Agent, subject only to the Permitted Encumbrances, and (ii) an ALTA survey, certified to each of the Lessor and Agent and the Title Insurance Company by a registered land surveyor, dated not more than six (6) months prior to the Closing Date, for the Real Property, acceptable to each of Lessor and Agent, which survey shall show: (A) the boundaries and legal description of the Real Property, (B) the location of all Improvements, (C) the location of all roadways and other access-ways upon or across the Real Property, (D) the location of all easements and rights-of-way on the Real Property which are of record, visible upon inspection or otherwise known to the Person rendering such survey, (E) the name of each public thoroughfare abutting the Real Property, (F) any encroachments onto adjacent land by Improvements located on the Real Property, (G) any encroachments onto the Real Property by improvements located on adjacent property, (H) no claims, defects or encumbrances other than the Permitted Encumbrances, and (I) such other matters as each of Lessor and Agent may reasonably require.

(f) Each of Lessor, Head Lessor, Agent and each Holder shall have received the Environmental Reports prepared by the Approved Environmental Consultant respecting the Real Property evidencing no pre-existing environmental condition or other environmental matter with respect to the Real Property that is not acceptable to such Person.

(g) Lessor and Agent shall have received with respect to the Real Property an appraisal report prepared by a Qualified Appraiser containing such opinions as shall be required by and acceptable to Lessor and Agent, Head Lessor shall have received with respect to the

Equipment an appraisal report prepared by a Qualified Appraiser containing such opinions as may be required by and acceptable to Head Lessor, and each of Lessor, Head Lessor and Agent shall have received an engineering report with respect to the Property in form and substance reasonably acceptable to each such Person.

(h) Opinions of counsel for Lessee and Lessor, dated the Closing Date, shall have been received, addressed to the appropriate parties to the Operative Documents, from such counsel and containing opinions as to such matters of law as are customary for the transactions contemplated by the Operative Documents and otherwise reasonably required by the intended recipient thereof, such counsel and the form and substance of each opinion to be reasonably acceptable to the intended recipient thereof.

(i) A certificate of an Authorized Officer with respect to organizational documents, by-laws, partnership agreement, operating agreement or other governing documents, authorizing resolutions approving the Overall Transaction and the incumbency of the officers executing the Operative Documents shall have been delivered by Lessee and Lessor, all in form and substance reasonably acceptable to the parties to the Operative Documents.

(j) The Title Insurance Company shall have been provided with funds estimated to be sufficient to permit payment of, and arrangements shall have been made with such Title Insurance Company for the payment of, title premiums for each Title Policy and any applicable transfer, stamp, recording, filing and similar taxes, fees and charges with respect to the Closing Documents and the transactions contemplated hereby and thereby.

(k) Head Lessor shall have received the Bill of Sale from the Seller and AFG which shall be satisfactory to the Head Lessor, and Lessor shall have received a bill of sale related to the Improvements and Fixtures from the Seller and AFG which shall be satisfactory to Lessor, Agent and Head Lessor.

(l) Lessee shall have delivered a legal opinion in form and substance acceptable to Lessor, Agent and Head Lessor with respect to local law matters respecting the state in which the Property is located from counsel located in the state where such Property is located, such counsel to be acceptable to Lessor, Agent and Head Lessor.

(m) Each of the Lessor, Agent, each Holder and Head Lessor shall be satisfied that the acquisition of the Property and the execution of the Mortgage and the other Operative Documents, including without limitation the Debt Documents, will afford the rights, remedies and benefits intended to be afforded to each such Person under the Operative Documents.

(n) Lessor shall have received the Deed from AFG with respect to the Real Property in such form as shall be acceptable to Lessor and Agent, Agent shall have received the Mortgage in such form as shall be acceptable to Agent and Head Lessor and each other party to any other Operative Document shall have executed and delivered each such Operative Document to which such Person is a party and each other delivery required under any Operative Document shall have been made.



- (o) The Holders shall have provided the proceeds under the Notes to the Lessor to pay the portion of the Purchase Price payable by it in respect of the Real Property.
- (p) Each of Lessor, Agent and Head Lessor shall have received evidence of insurance from Lessee, acceptable to such Person with respect to the Property.
- (q) Each of Lessor, Agent and Head Lessor shall have received (i) Uniform Commercial Code lien searches, tax lien searches and judgment lien searches regarding the Real Property and Equipment in such jurisdictions and against such parties as determined by such Person, in each case performed by a nationally recognized search company acceptable to such Person and (ii) the liens referenced in such lien searches which are objectionable to any such Person shall be either removed or otherwise handled in a manner satisfactory to such Person prior to the Closing Date.
- (r) All taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Documents and/or documents related thereto shall have been paid or provisions for such payment shall have been made to the satisfaction of each of Lessor, Agent and Head Lessor.
- (s) In the opinion of each Participant and their respective counsel, the transactions contemplated by the Operative Documents do not and will not subject such Participant to any adverse regulatory prohibitions, constraints, penalties or fines.
- (t) Each of Lessor and Head Lessor shall have received an assignment of all assignable guaranties and warranties of Lessee with respect to the portion of the Property being acquired by such Person, together with the original of each guaranty and warranty, if available.
- (u) Lessor shall have received copies of the plans and specifications, including without limitation all operational guidelines, renderings, and any other information regarding the Property required by it.
- (v) All leases, subleases, licenses, concessions or other agreements in existence prior to the Closing Date (including the Synthetic Lease) in connection with the Property shall be terminated on or prior to the Closing Date in a manner acceptable to Lessor, Agent and Head Lessor, all amounts payable in connection therewith shall have been indefeasibly paid, all obligations arising in connection therewith shall have been fully satisfied and all releases related to any Liens arising in connection therewith shall have been released and appropriate filings shall have been made; provided, that in the case of the oral license to Werner Enterprises with respect to the portion of the Property known as the Shop Maintenance, a letter shall have been delivered by Werner Enterprises on behalf of the parties to the Operative Documents indicating that its interest in the Property is terminable at will and subject and subordinate in all respects to the interests of the parties arising under the Operative Documents.
- (w) All such further actions shall have been taken and all further deliveries made, including the filing and recording of all documents, instruments and financing statements necessary or beneficial to establish and protect title to the Real Property in Lessor, title to the

Equipment in the Head Lessor and the Lien of the Mortgage in the Agent for the benefit of the Holders free and clear of all Liens, as may be required by any Person a party to any Operative Document, and all such action shall have been taken as any Person a party hereto may reasonably request in connection with the Overall Transaction.

No condition required to be fulfilled under this Section 8 shall be waived except by a writing signed by each Person for whose benefit such condition is required to be satisfied. In addition, and notwithstanding the closing of the transactions contemplated by this Agreement and the other Operative Documents, any condition precedent required to be performed or satisfied by this Section 8 and not performed or satisfied on the Closing Date may be subsequently required to be performed or satisfied by any Person for whose benefit such condition precedent is intended, notwithstanding the closing hereunder.

#### SECTION 9. Conditions to the Obligation of Seller.

The obligation of Seller to consummate the transactions described in this Agreement is subject to the fulfillment prior to or at the closing of each of the following conditions (any of which may be waived by Seller):

- (a) All representations and warranties of each Purchaser hereunder shall be true and correct in all material respects as of the time of the closing.
- (b) Each Purchaser shall have paid or deposited in escrow its portion of the Purchase Price with respect to the portion of the Property being acquired pursuant to Section 3 and shall have performed or satisfied all other obligations under this Agreement it is required to perform pursuant to this Agreement.
- (c) Seller shall have received the Closing Documents required to be delivered by each Purchaser pursuant to Section 10.

#### SECTION 10. Closing Documents.

The parties shall deliver the following documents, all in form and substance reasonably satisfactory to Lessor and Head Lessor and all dated as of the Closing Date (the "Closing Documents"), prior to or at the closing:

- (a) Seller shall execute and deliver, or cause to be executed and delivered as the case may be, the following Closing Documents:
  - (i) the Deed with covenants against grantor's acts with respect to the Real Property, granting and conveying to Lessor good, indefeasible and marketable fee simple title to such Real Property, subject only to the Permitted Encumbrances;
  - (ii) with respect to the Deed, any transfer tax statement, return, affidavit or other document required or requested in connection therewith;

(iii) a copy of the current certificate of occupancy for the Property with all amendments thereto (unless the municipality where the Property is located does not issue or maintain such certificates or their legal equivalent);

(iv) a certification of non-foreign status as required by the Foreign Investment in Real Property Tax Act and regulations thereunder and any similar state statutes;

(v) all environmental transfer or disclosure forms, if any, required by the state or municipality in which the Property is located;

(vi) the Bill of Sale warranting the transfer of good and marketable title to the Equipment free and clear of all Liens and the bill of sale related to Improvements and Fixtures free and clear of all Liens;

(vii) the other documents, certificates, opinions and items referred to in Section 8; and

(viii) such other documents, certificates, affidavits and deliveries as either of the Purchasers may require.

This provision shall survive the closing.

(b) Lessor shall deliver the portion of the Purchase Price related to the Real Property, the Head Lessor shall deliver the portion of the Purchase Price related to the Equipment and each Purchaser shall execute and shall deliver such other instruments and documents and take such other actions, as Purchasers are required to deliver or do hereunder to effectuate the transactions contemplated hereby in accordance with the provisions hereof. This provision shall survive the closing.

#### SECTION 11. Brokerage.

Each of the Lessee and the Purchasers represent and warrant to each other that they have not dealt with any broker, finder, financial adviser or similar Person in connection with the transactions contemplated by this Agreement (other than First Union Securities, Inc.). The provisions of this

Section shall survive the closing and any termination of this Agreement.

#### SECTION 12. Expenses.

Lessee agrees on the Closing Date and subsequent dates as invoices are received by Lessee to pay all costs and expenses relating to the transactions contemplated hereby and by the Operative Documents, including without limitation, the fees and expenses of Seller's legal counsel, the surveyor and all recording, documentation, transfer, filing and recording taxes (other than arising in connection with the Debt Documents), property, liability and title insurance premiums regarding the Property, and 50% of the fees and expenses of local counsel.

### SECTION 13. Notices.

Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be in writing sent to either (i) that Person's Address, and a copy thereof shall be sent to each Person to receive a copy pursuant to the definition of "Address", by a nationally recognized overnight courier service, and any such notice shall be deemed received one (1) Business Day after delivery to a nationally recognized courier service specifying overnight delivery, or (ii) that Person's fax number, and a second copy thereof shall be sent to each Person required to receive a copy pursuant to the definition of "Address", by a nationally recognized overnight courier service, specifying overnight delivery, prepaid, and any such notice shall be deemed received after the earlier of (x) the confirmation of receipt of such fax, or (y) one (1) Business Day after delivered to such courier. From time to time any party may designate a new Address or fax number for purposes of notice hereunder by giving fifteen (15) days' written notice thereof to each of the other parties hereto.

### SECTION 14. No Recording.

Neither party hereto shall record this Agreement or any memorandum hereof except as required Applicable Law and only upon prior written notice to the other party.

### SECTION 15. Entire Agreement.

Except as specified herein, this Agreement, the other Operative Documents and the Closing Documents constitute the entire agreement of the parties with respect to the transactions contemplated hereby and all prior understandings and agreements of the parties with respect to such transactions are merged into this Agreement and the Closing Documents.

### SECTION 16. Modification.

Except as specified herein, no provision of this Agreement shall be modified, waived or terminated, except by an instrument signed by the party against whom such modification, waiver or termination is to be enforced.

### SECTION 17. Parties Bound; Assignment.

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The rights and obligations of any party hereunder may not be assigned or transferred without the consent of the other parties, provided that each of the Purchasers may, without the consent of Seller, assign its rights under this Agreement to any designee provided any such assignment shall not result in the discharge or release of such Purchaser from its obligations to Seller hereunder. Each Participant shall be deemed to be a third-party beneficiary hereof with respect to the conditions precedent to be satisfied hereunder prior to the consummation of the transactions contemplated by this Agreement to the extent that any such Participant is an intended beneficiary of any item to be delivered or action to be taken under Section 8 by any other Person.

SECTION 18. Submission to Jurisdiction.

EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) SUBMITS IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, THE COURTS OF THE UNITED STATES OF AMERICA SITTING IN NEW YORK COUNTY AND APPELLATE COURTS FROM ANY THEREOF; (B) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN ANY SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURTS OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME; (C) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED IN THE MANNER SPECIFIED FOR NOTICES AND OTHER COMMUNICATIONS IN SECTION 13 AND SHALL BE EFFECTIVE AS PROVIDED IN SECTION 13; AND (D) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION OR COURT HAVING JURISDICTION.

SECTION 19. Choice of Law.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED [N ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED WITHOUT REGARD TO THE CONFLICT-OF-LAW PROVISIONS THEREOF.

SECTION 20. Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

SECTION 21. Counterparts.

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 22. Survival of Documents.

The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Documents, and each party's obligations under any and all thereof, shall survive the execution and delivery of this Agreement, the transfer of the Property (or any portion thereof) to the Purchasers or either of them and shall be and continue in effect

notwithstanding any investigation made by any party and the fact that any party may waive compliance with any of the other terms, provisions, or conditions of any of the Operative Documents. The indemnities of the parties provided for herein shall survive the expiration or termination of any thereof.

SECTION 23. Captions and Headings.

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

SECTION 24. Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 25. Further Assurances.

At Lessee's expense, each party hereto shall promptly and duly execute and deliver to the other party such further documents and promptly take such further action not inconsistent with the terms hereof as the other party may from time to time reasonably request in order more effectively to carry out the intents and purposes of this Agreement or to perfect and protect the rights and remedies intended to be afforded hereunder.

SECTION 26. Several Liability.

Notwithstanding any other provision in this Agreement or any other Operative Document, the obligations of each Purchaser are several and, notwithstanding any joint reference to the Purchasers hereunder, no obligation on the part of any Purchaser is intended to be construed as a joint obligation by the other of such Purchasers.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**Purchasers:**

**FU/DG FULTON, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**FIRST UNION COMMERCIAL CORPORATION,**  
a North Carolina corporation

By:

Name:

Title:

**DOLLAR GENERAL CORPORATION,**  
a Tennessee corporation

By:

Name:

Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**Purchasers:**

**FU/DG FULTON, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**FIRST UNION COMMERCIAL CORPORATION,**  
a North Carolina corporation

By:

Name:

Title:

**DOLLAR GENERAL CORPORATION,**  
a Tennessee corporation

By:

Name:

Title:



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**Purchasers:**

**FU/DG INDIANOLA, LLC,**  
a Delaware limited liability company

By: /s/ Benjamin F. Williams, Jr.  
-----  
Name: Benjamin F. Williams, Jr.  
-----  
Title: Senior Vice President & Managing Director  
-----

**FIRST UNION COMMERCIAL CORPORATION,**  
a North Carolina corporation

By: /s/ Linda Baxter  
-----  
Name: Linda Baxter  
-----  
Title: Vice President  
-----

**DOLLAR GENERAL CORPORATION,**  
a Tennessee corporation

By: /s/ Wade Smith  
-----  
Name: Wade Smith  
-----  
Title: Treasurer  
-----

## Schedule I

### Sale and Purchase Agreement

#### Mississippi Real Property

Land in Sunflower County Mississippi, some of which is located within the corporate limits of the City of Indianola, Mississippi, being more particularly described according to the survey of G. Wayne Gardner, dated February 10, 2000, as follows:

240,000 acres, more or less, located in the Southwest Quarter (SW 1/4) of Section 25, Northwest Quarter (NW 1/4) of Section 36, Southeast Quarter (SE 1/4) of Section 26 and Northeast Quarter (NE 1/4) of Section 35, all in Township 19 North, Range 5 West, Sunflower County, Mississippi and being further described as follows:

Commence at the Southwest corner of Section 26, Township 19 North, Range 5 West, Sunflower County, Mississippi; thence North 89 (Degree) 42' 40" East 2412.65 feet to a railroad iron; thence North 01(Degree) 46' 00" East 2321.41 feet to a point; thence South 56(Degree) 25' 00" East 1821.32 feet to a point; thence North 88(Degree) 50' 41" East 245.66 feet to a 1/2" rebar on the South right-of-way line of Beaver Dam Road and said point being the POINT OF BEGINNING of the parcel herein described; thence South 00(Degree) 04' 59" West 2816.57 feet to a 1/2" rebar; thence East 600 feet to a 1/2" rebar; thence South 00 (Degree) 04' 59" West 631.62 feet to a 1/2" rebar on the North right-of-way line of U.S. Highway 82; thence along the North right-of-way line of U.S. Highway 82 the next two calls - North 72(Degree) 32' 38" East 2193.34 feet to a 1/2" rebar; thence along a curve to the right having a radius of 8628.22 feet, a chord bearing of North 75(Degree) 10' 42" East and a chord distance of 793.18 feet, for an arc distance of 793.46 feet to a 1" iron pipe, thence North 05(Degree) 11' 43" West 270.00 feet to a 1/2" rebar, thence North 75 (Degree) 54' 38" East 170.25 feet to a 1/2" rebar; thence North 03(Degree) 16' 00" West 648.18 feet to a 1/2" rebar; thence North 04(Degree) 43' 32" West 895.60 feet to a 1/2" rebar; thence North 04(Degree) 36' 12" west 750.19 feet to a 1/2" rebar on the South right-of-way line of Beaver Dam Road; thence North 89(Degree) 43' 03" West 2255.17 feet along the South right-of-way line of Beaver Dam Road to a 1/2" rebar; thence along a curve to the left having a radius of 5689.58 feet, a chord bearing of South 89(Degree) 30' 15" West and chord distance of 154.56 feet, for an arc distance of 154.57 feet to a 1/2" rebar; thence South 88(Degree) 43' 34" West 18.53 feet along the South right-of-way line of Beaver Dam Road to a 1/2" rebar; thence South 89(Degree) 16' 28" West 33.73 feet along said South right-of-way line of Beaver Dam Road to a 1/2" rebar; thence South 88(Degree) 50' 41" West 962.13 feet along rebar and the POINT OF BEGINNING.

Being part of the property conveyed to Atlantic Financial Group, Ltd., a Texas limited partnership, by deed from Sunflower County Economic Development.District as recorded in Book S-33 at page 475 in the office of the Chancery Clark of Sunflower County, Mississippi.

**Schedule II**  
**Description of Equipment**

Distribution Center 914 Highway 82 West Indianola, Mississippi 38751 Phone: 601-887-5107 Fax: 601-887-6584

Acreage: 250 (+-)

Building Size: Original Sq. Ft.: 822,496, Office Area: 9,050 sf,

Building Height: 40' max at parapet, 33' clear under joist, 31' clear under joist girders

Bay Size: 50'-6" X 54'-10" & 50'-6" x 66'-0" Pallet Height:

Column Height:

Type of Construction of Building: Conventional steel with load-bearing tilt-up walls

Roof: 45 mil EPDM Mechanically Attached Roof with 1.8 inches of Rigid Insulation on 24 Gauge metal deck and bar joist. Number of Offices: 22

Number of Conference Rooms: 2

Number of Break rooms: 2

Number of Restrooms: 8

First Protection System: ESFR wet system with Fire Pump and Tank rated at 135 PSI at 2000 GPM

Number of Employee Parking Slots: 383 Number of Trailers Parking Slots: 600

Number of Dock Doors:	104
Receiving:	36
Shipping:	50

Mechanized:

Number of Cross Dock Doors: 18  
Number of Non Conveyance Cross Dock Doors: 0

## **Indianola Distribution Center**

Buschman Unisort X Sorter with Boss Control System

32 Powered Trailer Loaders

4 Cal Jan Powered Extendable Receiving Conveyors

Estimate over 15,000 feet of Transportation with Sorter Conveyors

**DOLLAR GENERAL CORPORATION  
MISSISSIPPI DISTRIBUTION CENTER**

**FULL CASE PICK MODULES #3,7 & 11**

**3 HIGH X 3 DEEP -32 BAYS LONG**

! 32-99" Long Bays with 3" Uprights & 96" Beams.

O.A.L. -264'3".

**! 3 Modules 96 Bays Total**

! 8'8" Wide Deck Supported 32" O.C.

! Deck consists of 1 1/8" tongue & Groove Plywood Laminated with .100" Gray Textured Polyethylene on the Top Side & A White Laminated Underside.

! Pallet Flow Rails to Consist of 1.9"-- 100# 2" O.C. with Ramp Stops & An Anti-Rollback device.

! All pick levels above the finish floor will have 1" x 1/8" bargrate secured between and beside the pallet flow rails covering the 2 inside pallet positions.

! Stairways are installed at each end.

! All necessary handrails & kick plates are included.

! 4" X 3" X1/4" integrated column projectors on fork truck aisle.

! Modifications on 2 bays at the end of each module to accommodate spiral curves by Buschman.

	Per Module	Total
	-----	-----
Pick Slots	333	999
Pallet Returns	24	72
	--	--
Total	357	1071
	---	----

**DOLLAR GENERAL CORPORATION MISSISSIPPI  
DISTRIBUTION CENTER**

**FULL CASE PICK MODULES #4**

**4 HIGH X 3 DEEP -33 BAYS LONG**

! 33-99" Long Bays with 4" Uprights & 95" Beams. O.A.L. -- 272'7"

! 8'8" Wide Deck Supported 32" O.C.

! Deck consists of 1 1/8" tongue & Groove plywood laminated with .100" Gray Textured Polyethylene on the Top Side & a

White Laminated underside.

! Pallet Flow Rails to Consist of 1.9"-- 100# 2" O.C. with Ramp Stops & An Anti- Rollback device.

! All pick levels above the finish floor will have 1" x 1/8" bargrate secured between and beside the pallet flow rails covering the 2 inside pallet positions.

! Stairways are installed at each end.

! All necessary handrails & kickplates are included.

! 4" X 4" X1/4" Integrated Column Projectors on Fork Truck Aisle.

! Modifications on 2 bays at the end of each module to accommodate spiral curves by Buschman.

Pick Slots	460
Pallet Returns	32
	--
Total	4924
	---

**DOLLAR GENERAL CORPORATION MISSISSIPPI  
DISTRIBUTION CENTER**

**FULL CASE PICK MODULES #8.10 & 12**

**3 HIGH X 3 DEEP -33 BAYS LONG**

! 33-99" Long Bays with 3" Uprights & 96" Beams. O.A.L.-- 272'6

**! 3 Modules -- 99 Bays Total**

! 8'8" Wide Deck Supported 32" O.C.

! Deck consists of 1 1/8" tongue & Groove Plywood Laminated with .100" Gray Textured Polyethylene on the Top Side & A

White Laminated Underside.

! Pallet Flow Rails to Consist of 1.9"-- 100# 2" O.C. with Ramp Stops & An Anti- Rollback device.

! All pick levels above the finish floor will have 1" x 1/8" bargrate secured between and beside the pallet flow rails covering the 2 inside pallet positions.

! Stairways are installed at each end.

! All necessary handrails & kickplates are included.

! 4" X 3" X 1/4" integrated column projectors on fork truck aisle.

! Modifications on 2 bays at the end of each module to accommodate spiral curves by Buschman.

	Per Module	Total
	-----	----
Pick Slots	345	1035
Pallet Returns	24	72
	--	--
Total	369	1107
	----	----

**DOLLAR GENERAL CORPORATION  
MISSISSIPPI DISTRIBUTION CENTER**

**FULL CASE PICK MODULES #9**

**4 HIGH X 3 DEEP -32 BAYS LONG**

! 32-99" Long Bays with 4" Uprights & 95" Beams. O.A.L.-- 264'4".

! 8'8" Wide Deck Supported 32" O.C.

! Deck consists of 1 1/8" Tongue & Groove Plywood Laminated with .100" Gray Textured Polyethylene on the top side & A

White Laminated Underside.

! Pallet Flow Rails to Consist of 1.9"-- 100# 2" O.C. with Ramp Stops & An Anti-Rollback device.

! All pick levels above the finish floor will have 1" x 1/8" bargrate secured between and beside the pallet flow rails covering the 2 inside pallet positions.

! Stairways are installed at each end.

! All necessary handrails & kickplates are included.

! 4" X 4" X 1/4" integrated column projectors on fork truck aisle.

Modification on 2 bays at the end of each module to accommodate spiral curves by Buschman.

	Total
Pick Slots	444
Pallet Returns	32
	--
Total	476
	----



**DOLLAR GENERAL CORPORATION MISSISSIPPI  
DISTRIBUTION CENTER**

**3 LEVEL BREAK BACK MODULE**

! Twenty-Nine (29) 99" Long Bays (including 3" Uprights) O.A.L. 239'6:

! 11'6" Wide Center Aisle Supported 32" O.C.

! 2-7'10" Wide Stocking Aisles Supported 24" O.C.

**! 4 Merchandise Receiving Port - 2 Levels & 4 per side.**

! Deck to be 1 1/8" Tongue & Groove Polyethylene Textured Plywood with a White Underside, Tek Screwed to Cross Aisle Supports.

! High Density Polyethylene overlay will be .10" thick.

**! 52 Bays Per Level -- Total 156.**

! Carton Flow Trays are 96" x 96", with 4 Levels per opening and 15 tracks per shelf. Dividers are not included or recommended. 264 extra tracks are included.

! Stairways are supplied 1 bay in from each corner.

! All necessary handrails and kickplates are included.

! 930 wire decks -- internal waterfall style.

**DOLLAR GENERAL CORPORATION  
MISSISSIPPI DISTRIBUTION CENTER**

**INSTALL ARDMORE DRIVE-IN RACK**

**THE OPERATION ASSUMES THE TAKE-DOWN AND DELIVERY OF 90 BAYS OF 3 + 3 DRIVE-IN RACK FROM THE ARDMORE ADDITION.**

PALLET POSITIONS -- SLAPPER LINE	
110 BAYS 5HIGH X 2 DEEP	1100
CONTAINMENT ROOM -	
67 BAYS 3 HIGH X 2 DEEP	402
	---
TOTAL	1502
	----

## INDIANOLA DISTRIBUTION CENTER

### COMPONENTS COMPONENT DESCRIPTIONS

WMS -- RS/6000 These computers run the Warehouse Management System (WMS) Hardware application software. Application software provides inventory control, generates and distributes tasks related to receiving, replenishments, picking and shipping.

PTL -- RS/6000 Hardware Hardware used to support the Pick-to-Light system.

Radio Frequency (RF) Equipment Wireless display and keypad/scanner interface devices used to guide the warehouse workers to necessary work and receive acknowledgements from user for work completed.

OCE' Printing Solution	Printers and print servers used to produce want lists and pick/ship labels.
PC's for office areas	Used to interface with WMS and corporate computer systems.
HP Laserprinters	For office use.
Line printers and print servers	1000 line/minute impact printers used for receiving, shipping and analytical reporting. Bar-code enabled to allow printing of location and storage tracking labels.
Cubiscan	Used to capture weights and dimensions for case and units being received into the warehouse. Measurements are passed back to WMS to provide cube and dimension data.
Zebra printers	Used to reprint bar-coded rack labels.
IBM Display terminals	Terminal screens used in the warehouse to retrieve data and communicate with the WMS computer system.
Network H/W, SW (NT) servers	Network equipment that allows communication within the DC and from the DC to corporate (LAN and WAN)

**Exhibit A**  
**Sale and Purchase Agreement**

**Mississippi**

Those matters shown on Schedule B Section II of Old Republic Title Insurance Company Title Commitment Order Number D00030227C.

SunTrust Bank  
Mail Code NA 1937  
Post Office Box 305110

Scott T. Corley  
Vice President  
Corporate & Investment Banking

SUNTRUST  
Nashville, TN 37230-5110  
Tel (615) 748-5715  
Fax (615) 748-5269

May 22, 2000

Dollar General Corporation  
100 Mission Ridge  
Goodlettsville, TN 37072

Old Republic National Title Insurance Company 201 4th Avenue North  
Suit 150  
Nashville, TN 37219

**To Whom It May Concern:**

As of May 22,2000, the amount of money owed by Dollar General Corporation to SunTrust Bank in support of the Indianola, MS and Fulton, MO distribution centers is as follows:

Notes	Principal Amount	Accrued Interest	Per Diem Interst
A Notes	\$536,512,730.81	\$335,585.28	\$15,253.87
B Notes	\$ 11,704,663.58	\$ 45,402.71	\$ 2,063.76
Equity	\$ 3,562,238.91	\$ 15,668.29	\$ 712.21
Total	\$101,779,683.30	\$396,656.28	

Upon receipt of the appropriate proceeds, SunTrust Bank will release all liens relating to property and equipment of the Indianola, MS and Fulton, MO distribution centers.

Sincerely,

*/s/ Scott Corley*  
-----  
Scott Corley  
Director

**LEASE AGREEMENT**

**Dated as of June 1,2000**

between  
**FU/DG FULTON, LLC,**

a Delaware limited liability company, as Lessor

and  
**DOLLAR GENERAL CORPORATION,**

a Tennessee corporation, as Lessee

Property:  
1900 U.S. Highway 54  
Fulton, Missouri 65251  
Calloway County

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## SCHEDULES AND EXHIBITS

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Exhibit A	Form of Assignment and Assumption Agreement
Exhibit B	Description of Land
Exhibit C	Form of Estoppel Agreement
Exhibit D	Form of Reaffirmation

THIS LEASE AGREEMENT (this "Agreement") is made and entered into as of June 1, 2000, by and between FU/DG FULTON, LLC, a Delaware limited liability company, as Lessor ("Lessor"), having its principal place of business at One First Union Center TW-6, Charlotte, North Carolina 28288-0166, and DOLLAR GENERAL CORPORATION, a Tennessee corporation, as Lessee ("Lessee"), having its principal place of business at 100 Mission Ridge, Goodlettsville, Tennessee 37072.

**RECITALS:**

- A. Upon satisfaction of applicable conditions precedent, Lessor shall acquire the Property on the Closing Date; and
- B. Lessor desires to let and lease to Lessee, and Lessee desires to hire and lease from Lessor, the Property.

**TERMS**

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

**ARTICLE I**

**DEFINITIONS**

Section 1.01. Definitions.

The capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in Appendix A hereto for all purposes hereof.

**ARTICLE II**

**LEASE OF PROPERTY**

Section 2.01. Demise and Lease.

(a) Lessor demises on the Closing Date and leases the Property to Lessee, and Lessee does rent and lease the Property from Lessor, for the Interim Term, if any, and the Base Term and, subject to the exercise by Lessee of its renewal options as provided in Article V hereof, for the Renewal Terms.

(b) Lessee may from time to time own or hold under lease or license from Persons other than Lessor furniture, equipment and personal property, including Lessee's Equipment and Personality, located on or about the Property, which shall not be subject to this Lease. Lessor shall from time to time, upon the reasonable request of Lessee, promptly acknowledge in writing to Lessee or other Persons that Lessor does not own or, except as provided in Article X, have any other right or interest in or to such furniture, equipment and personal property, including Lessee's Equipment and Personality, and Lessor hereby waives for itself and all other Persons claiming by or through Lessor any such right, title or interest in Lessee's Equipment and Personality.

## ARTICLE III

### RENT

#### Section 3.01. Interim Rent and Base Rent.

In the event that the Rent Commencement Date shall be other than the first day of any calendar month, Lessee shall pay to Lessor on the last Business Day of the month in which Rent Commencement Date falls, arrears rent for the Interim Term equal to the amount set forth in Schedule 3.01 ("Interim Rent"). Lessee shall pay to Lessor Base Rent on each Rent Payment Date during the Base Term in the amount set forth in Schedule 3.01, and shall pay to Lessor Renewal Rent on each Rent Payment Date during any Renewal Term as prescribed by Article V. Each installment of Interim Rent, Base Rent and Renewal Rent is payable monthly in arrears.

#### Section 3.02. Supplemental Rent.

Lessee shall pay to the Rent Account described in Section 3.03 below, or to such other Person as shall be entitled thereto in the manner contemplated herein, any and all Supplemental Rent as the same shall become due and payable. In the event of Lessee's failure to pay when due and payable any Supplemental Rent, Lessor or such other Person shall have all rights, powers and remedies provided for herein or by law or in equity or otherwise in the case of nonpayment of Rent, subject to the terms of the Intercreditor Agreement.

#### Section 3.03. Method of Payment.

Interim Rent, Base Rent and Renewal Rent shall be paid in immediately available funds as of the relevant payment date to such account as Lessor or its assignee may from time to time designate (the "Rent Account") pursuant to written direction on at least ten (10) Business Days' prior written notice to Lessee. Lessee shall promptly pay Supplemental Rent to the Rent Account or to the party entitled thereto, and Lessee shall pay to such Rent Account or Lessor's assignee any Make-Whole Premium, which is due and payable under this Lease. Each such payment of Rent shall be made by Lessee by wire or other transfer of funds consisting of lawful currency of the United States of America which shall be immediately available no later than 4:00 PM (New York City time) at the place of receipt on the scheduled date when such payment shall be due, unless such scheduled date shall not be a Business Day, in which case such payment shall be made at such time on the immediately preceding Business Day, with the same force and effect as though made on such scheduled dates. If any payment of Base Rent or Supplemental Rent is received after 4:00 PM (New York City time) on the date when such rent is due, such rent shall be deemed received on the next succeeding Business Day.

#### Section 3.04. Late Payment.

If any payment of Base Rent is not paid on the due date of such payment, then Lessee shall pay interest thereon at the interest rate provided for in the Notes (whether or not such notes shall be cancelled); provided, that if such payment is not paid by the third (3rd) day of each calendar month, then for each day thereafter until such Base Rent is paid, interest shall accrue on the Base Rent due but unpaid at the Default Rate. If any payment of any Supplemental Rent payable to Lessor shall be delinquent, Lessee shall pay interest thereon from the date such payment became due and payable to the date of receipt thereof by Lessor at a rate per annum equal to the Default Rate. In addition, if any payment of Rent shall not be paid by the third (3rd) day of each calendar month, Lessee shall pay to the Person entitled thereto as a late charge and as Supplemental Rent an amount equal to four percent (4%) of the unpaid Rent actually due and payable thereon. Lessee acknowledges its responsibility to pay interest and late charges and penalties owed to any third party by reason of Lessee's failure to pay when due Interim Rent, Base Rent, Renewal Rent or Supplemental Rent owed to such party.

#### Section 3.05. Net Lease, No Setoff, Etc.

This Lease is a net lease and it is agreed and intended that Interim Rent, Base Rent, Renewal Rent, Supplemental Rent and any other amounts payable hereunder by Lessee shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction and that Lessee's obligation to pay all such amounts, throughout the Interim Term, the Base Term and all applicable Renewal Terms is absolute and unconditional. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected for any reason, including without limitation:

(a) any defect in the condition, merchantability, design, quality or fitness for use of the Property or any part thereof, or the failure of the Property to comply with all Applicable Laws, including any inability to occupy or use the Property by reason of such noncompliance; (b) any damage to, removal, abandonment, salvage, loss, condemnation, theft, scrapping or destruction of or any requisition or taking of the Property or any part thereof, or any environmental conditions on the Property or any property in the vicinity of the Property; (c) any restriction, prevention or curtailment of or interference with any use of the Property or any part thereof including eviction; (d) any defect in title to or rights to the Property or any Lien on such title or rights to the Property; (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by any Person; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Lessee or any other Person, or any action taken with respect to this Lease by any trustee or receiver of Lessee or any other Person, or by any court, in any such proceeding; (g) any right or claim that Lessee has or might have against any Person or any vendor, manufacturer, contractor of or for the Property; (h) any failure on the part of Lessor or any other Person to perform or comply with any of the terms of this Lease, any other Operative Document or of any other agreement; (i) any invalidity, unenforceability, rejection or disaffirmance of this Lease by operation of law or otherwise against or by Lessee or any provision hereof or any of the other Operative Documents or any provision of any thereof; (j) the impossibility of performance by Lessee, Lessor, any other Person or all of them; (k) subject to Applicable Law, any action by any court, administrative agency or other Governmental Authority; (l) any interference, interruption or cessation in the use, possession or quiet enjoyment of the Property; or (m) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether foreseeable or unforeseeable, and whether or not Lessee shall have notice or knowledge of any of the foregoing. Unless the Lease is earlier terminated in accordance with its terms, this Lease shall be noncancellable by Lessee for any reason whatsoever and, Lessee, to the extent now or hereafter permitted by Applicable Laws, waives all rights now or hereafter conferred by Applicable Law to quit, terminate or surrender this Lease or to any diminution, abatement or reduction of Rent payable hereunder. Under no circumstances or conditions shall Lessor or any Person other than Lessee be expected or required to make any payment of any kind hereunder or have any obligations hereunder with respect to the use, possession, control, maintenance, alteration, rebuilding, replacing, repair, restoration or operation of all or any part of the Property, so long as the Property or any part thereof is subject to this Lease, and Lessee expressly waives the right to perform any such action at the expense of Lessor or any other Person pursuant to any law.

### Section 3.06. Minimum Rent.

Anything contained in this Lease or any other Operative Document to the contrary notwithstanding, payments of Interim Rent and Base Rent shall be required to be paid at times and in amounts at least sufficient to pay in full any payments required to be made in respect of (i) principal (other than any balloon or accelerated payment) and interest arising under the Debt Documents, and (ii) Head Lease Fixed Rate Interim Rent, Head Lease Base Rent and Head Lease Fixed Rate Renewal Rent under the Head Lease. Further, each payment of Termination Value or other amount due on or with respect to a termination of the Lease upon a Casualty or Condemnation shall be payable at such time and in such amount that is at least sufficient to pay in full as of the date such payment is due, the aggregate unpaid principal under the Debt Documents, together with all unpaid interest thereon accrued through the date on which such payment is made, and any Termination Value under the Head Lease (or other amount computed in reference to Termination Value or payable in respect of a Casualty or Condemnation or other termination of the Head Lease), together with any accrued but unpaid Head Lease Interim Rent, Head Lease Base Rent and Head Lease Fixed Rate Renewal Rent. Lessee acknowledges that an amount equal to the Make-Whole Premium shall be required to be paid by it in connection with the repayment of the Indebtedness after the occurrence of a Lease Event of Default.

## ARTICLE IV

### RIGHT OF FIRST REFUSAL

#### Section 4.01. Right of First Refusal.

(a) Provided that no Lease Event of Default exists and no Lease Default has occurred and is continuing, if Lessor should at any time during the Term receive a bona fide offer to purchase the Lessor Property (the "Refusal Offer") from a third party and Lessor desires to accept such offer, Lessor shall deliver to Lessee a written notice (the "Acquisition Notice") setting forth the name of the prospective purchaser and the terms and conditions of such Refusal Offer.

(b) Lessee shall have twenty (20) days from receipt of the Refusal Offer to elect to acquire the Lessor Property pursuant to the terms and conditions of such Refusal Offer (the "Right of First Refusal") by delivering written notice thereof to Lessor. Delivery of such written notice shall obligate Lessee to purchase the Lessor Property on the date which is sixty (60) days after receipt of the Refusal Offer (or any earlier date requested by Lessee and acceptable to Lessor) and on the terms and conditions set forth in the Refusal Offer. If Lessee elects (or is required under the Refusal Offer) to purchase the Lessor Property subject to the lien of the Mortgage, Lessee shall be obligated to comply with the applicable provisions of the Debt Documents and in all events Lessee recognizes that the Right of First Refusal is subject to the terms of the Debt Documents and Head Lease. In the event Lessee shall not elect to exercise its Right of First Refusal, fails to timely deliver notice within the twenty

(20) day period or a Lease Event of Default exists or Lease Default shall have occurred and be continuing at the date of exercise or at any time thereafter and prior to the conveyance of the Lessor Property, Lessee shall conclusively be deemed to have waived its Right of First Refusal as to the transaction described in the Refusal Offer in question and Lessor may thereupon proceed to sell the Lessor Property on the terms and conditions and to the party specified in the Refusal Offer in question. The Right of First Refusal shall be applicable to any future sales, and this Lease shall remain in full force and effect. Modifications may be made in the offer outlined in the Refusal Offer without the necessity of resubmitting the offer to Lessee; provided, that the purchase price is not reduced, the payment terms are not changed, and that the Closing Date is not extended for a period in excess of one hundred eighty (180) days.



Section 4.02. Non-Applicability of Section 4.01.

- (a) Section 4.01 shall not apply to a sale, transfer, conveyance, assignment or other disposition to the purchaser at a foreclosure sale in connection with the foreclosure, or to any transferee in connection with a deed in lieu of foreclosure of the related Mortgage or with respect to any sale, transfer, conveyance, assignment or disposition which occurs during the existence of a Lease Event of Default.
- (b) Notwithstanding anything herein to the contrary, the Right of First Refusal shall not be applicable if the Lessee has failed to timely exercise each option to extend the Term for each Renewal Term elected.
- (c) This Article IV shall not be construed as applying to any Refinancing or reducing or modifying in any way the restrictions on transfer set forth in Article XIII or otherwise in any Operative Document.
- (d) Any purchase of the Lessor Property under this Article IV will be subject to the terms and provisions of the other Operative Documents.

Section 4.03. Miscellaneous.

- (a) If Lessee is the purchaser under this Article IV, then (and notwithstanding any terms of a bona fide offer to purchase received by Lessor) such purchase shall be on an "as is, where is" basis without any representations or warranties (other than against Lessor's Liens arising under the Lessor) and the Lessee shall and hereby agrees to release, indemnify and hold harmless the Lessor and each other Indemnity from and against any and all claims arising from or related to the condition of the Property, including, but not limited to, claims arising under Environmental Laws.
- (b) Lessee's failure to elect to purchase the Lessor Property shall under no circumstances constitute a waiver on the part of Lessee to exercise its rights under this Article IV, with respect to any subsequent sale, transfer, conveyance, assignment or other disposition of the Lessor Property.

## ARTICLE V

### RENEWAL OPTIONS

#### Section 5.01. Renewal Options.

(a) Lessor hereby grants to Lessee the option to extend the term of this Lease for the following periods (each, a "Renewal Term"):

(i) for a period of five (5) years commencing on the date that is the day after the expiration of the Base Term and ending on the fifth (5th) anniversary of the expiration of the Base Term (the "First Renewal Term"); and

(ii) for five (5) successive terms of five (5) years each (each, an "Additional Renewal Term"), with each such Additional Renewal Term commencing on the date that is the day after the expiration of the preceding Renewal Term.

(b) In order to exercise its option to extend this Lease for any Renewal Term, the following procedure shall be followed:

(i) Lessee shall give Lessor irrevocable written notice of its intent to exercise its option to extend the term of this Lease not less than twelve (12) months prior to the expiration of the Base Term or nine (9) months prior to the expiration of any then current Renewal Term, as the case may be (the "Intent to Renew Date"), time being of the essence.

(ii) The monthly Renewal Rent (the "Renewal Rent") payable for each Renewal Term shall be equal to Fair Market Rental Value.

(c) The right of Lessee to extend the term of this Lease for any Renewal Term is contingent upon there not being any Lease Default or Lease Event of Default in existence on the date of Lessee's exercise of such right.

#### Section 5.02. Lease Provisions Applicable During Renewal.

All the provisions of this Lease shall be applicable during each Renewal Term, except the number of Renewal Terms shall be correspondingly reduced.

## ARTICLE VI

### LESSEE'S ACCEPTANCE OF PROPERTY, ENFORCEMENT OF WARRANTIES

#### Section 6.01. Waivers.

The Property is demised and let by Lessor "AS IS" in its present condition, subject to (a) the rights of any parties in possession thereof, (b) the state of the title thereto existing at the time of the commencement of the Lease Term (other than defects in, or exceptions to, title, if any, created by Lessor not otherwise arising from or contemplated by the Operative Documents), (c) any state of facts which an accurate survey or physical inspection might show, (d) all Applicable Laws, (e) any violations of Applicable Laws which may exist at the commencement of the Lease Term and (f) the presence of any Hazardous Materials at, on or under the Property or at, on or under any property in the vicinity of the Property. Lessee currently occupies the Property and acknowledges the same to be satisfactory. NO PARTICIPANT HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE VALUE, HABITABILITY, COMPLIANCE WITH ANY PLANS AND SPECIFICATIONS, CONDITION, DESIGN, OPERATION, LOCATION, USE, DURABILITY, MERCHANTABILITY, CONDITION OF TITLE, OR FITNESS FOR USE OF THE PROPERTY (OR ANY PART THEREOF) FOR ANY PARTICULAR PURPOSE, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. WITH RESPECT TO THE PROPERTY (OR ANY PART THEREOF) AND NO PARTICIPANT OR ANY AFFILIATE SHALL BE LIABLE FOR ANY LATENT, HIDDEN OR PATENT DEFECT THEREIN OR FOR THE FAILURE OF THE PROPERTY TO BE CONSTRUCTED IN ACCORDANCE WITH ANY PLANS AND SPECIFICATIONS THEREFOR, FOR THE COMPLIANCE OF THE PLANS AND SPECIFICATIONS FOR THE PROPERTY WITH APPLICABLE LAWS, FOR THE FAILURE OF THE PROPERTY, OR ANY PART THEREOF, TO OTHERWISE COMPLY WITH ANY APPLICABLE LAWS OR FOR ANY OTHER MATTER RELATING TO OR ARISING OUT OF THE PROPERTY OR UNDER THE OPERATIVE DOCUMENTS. It is acknowledged that Lessee (or an Affiliate of Lessee) and others have occupied the Property as tenant or owner immediately prior to entering into this Lease and that Lessee has inspected the Property, is satisfied with the results of its inspections of the Property and is entering into this Lease solely on the basis of the results of its own inspections and all risks incident to the matters discussed in the preceding sentence. The provisions of this Article VI have been negotiated, and the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by any Participant or any Affiliate thereof, express or implied, with respect to the Property, that may arise pursuant to any law now or hereafter in effect, or otherwise and specifically negating any warranties under the Uniform Commercial Code.

#### Section 6.02. Lessee's Right to Enforce Warranties.

(a) Subject to Section 6.02(b) below, Lessor hereby assigns and sets over to Lessee, and Lessee hereby accepts the assignment of all of Lessor's right, title and interest, and estate in, to and under, any and all warranties and other claims ("Warranties") against dealers, manufacturers, vendors, contractors and subcontractors relating to the construction, manufacture, sale, use, operation or maintenance of the Property or any portion thereof now existing or hereafter acquired (excluding from such assignment any such warranties and claims which by their terms are not assignable without loss of some or all of the benefits of such warranties or claims or require the consent of any Person where such consent has not been obtained); provided, however, that no assignor shall have no obligations under, or liabilities with respect to, any such warranties and claims. To the extent that any Warranties are not hereby assigned to Lessee, Lessor, at the risk, cost and expense of Lessee, agrees to cooperate with Lessee and act at the reasonable direction of Lessee to administer and prosecute any claim arising from or in connection with any Warranty.

(b) Unless Lease Event of Default exists or a Lease Default shall have occurred and be continuing, Lessor authorizes Lessee (directly or through agents) at Lessee's expense to, and Lessee shall, assert diligently for the benefit of Lessor (or other assignor or owner), during the Lease Term, Lessor's rights (or such other assignor or owner) (if any) under any applicable Warranty and any other claim that Lessee or Lessor (or such other assignor or owner) may have against any dealer, vendor, manufacturer, contractor or subcontractor with respect to the Property or any portion thereof

(c) Unless a Lease Event of Default exists or a Lease Default shall have occurred and be continuing, Lessor agrees, at Lessee's risk and expense, to cooperate with Lessee and take all reasonable action necessary as specifically requested by Lessee to enable Lessee to enforce all of Lessor's rights (if any) under this Section 6.02.

**ARTICLE VII**  
**LIENS**

Section 7.01. Liens.

Lessee shall not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to (i) any and all of the Property, title thereto or any interest therein, (ii) this Lease or the leasehold interest created hereby, (iii) Rent, title thereto or any interest therein or (iv) the rentals payable with respect to the subletting of the Property, except Permitted Liens and Permitted Encumbrances. Lessee shall promptly, but not later than thirty (30) days after Lessee has Actual Knowledge of the occurrence thereof, at its own expense, take such action as may be necessary duly to discharge or eliminate or bond in a manner reasonably satisfactory to Lessor any such Lien (other than Permitted Liens and Permitted Encumbrances).

NOTHING CONTAINED IN THIS LEASE SHALL BE CONSTRUED AS CONSTITUTING THE CONSENT OR REQUEST OF LESSOR OR ANY AFFILIATE THEREOF, EXPRESS OR IMPLIED, TO OR FOR THE PERFORMANCE BY ANY CONTRACTOR, LABORER, MATERIALMAN OR VENDOR OF ANY LABOR OR SERVICES OR FOR THE FURNISHING OF ANY MATERIALS FOR ANY CONSTRUCTION, ALTERATION, ADDITION, REPAIR OR DEMOLITION OF OR TO THE PROPERTY OR ANY PART THEREOF, WHICH WOULD RESULT IN ANY LIABILITY OF ANY SUCH PERSON FOR PAYMENT THEREFOR. NOTICE IS HEREBY GIVEN THAT NO PARTICIPANT OR ANY AFFILIATE WILL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING AN INTEREST IN THE PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANICS OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF ANY PARTICIPANT OR ANY AFFILIATE THEREOF IN AND TO THE PROPERTY.

## ARTICLE VIII

### USE AND REPAIR

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#### Section 8.01. Use.

The Property and each portion thereof is intended to be used as a distribution center in connection with the ordinary and customary operations of Lessee and shall not (i) be used in a discriminatory manner taking into account other properties owned, leased or operated by Lessee, (ii) be used in a manner that would cause the Property or the Equipment to be "tax-exempt use property" within the meaning of Section 168(h) of the Code or "tax-exempt bond financed property" within the meaning of Section 168(g)(5) of the Code, (iii) be used in a manner that would constitute a nuisance or cause or increase the risk of causing any environmental liability with respect thereto, (iv) be used in a manner that would invalidate any Warranty on or with respect to the Property or any portion thereof or any insurance policy maintained or required to be maintained on or in respect of the Property, (v) be used in a manner that would violate any Applicable Laws, (vi) be used for the mining for removal of any oil, gas, minerals or dirt or (vii) other than in the ordinary course of the business of Lessee be used in a manner that involves the storage, handling or disposing of Hazardous Materials (provided that all such storage, handling or disposing shall comply with Environmental Laws). In the event that Lessee desires to change the use of the Property or any portion thereof other than as a distribution center in connection with its ordinary and customary operations, Lessee shall provide notice to Lessor of the intended use, which use shall comply with clauses (ii) through (vii) above. In addition, the Property shall not be used in connection with manufacturing activities other than light assembly, and any change of use shall not increase the level at which Hazardous Materials are used on the Property, increase the risks that the Property or any Indemnity shall be subjected to any environmental or other Claim or that any Hazardous Material will be released or discharged at or from the Property or that Remedial Action will be required with respect to any portion of the Property. Further, any change in use with respect to the Facility shall not result in structural alterations or modifications to the Property or any portion thereof or impair the utility, remaining useful life or current or residual value of the Property or any portion thereof

#### Section 8.02. Maintenance.

Lessee, at its own expense, shall at all times, (i) maintain the Property and each portion thereof in good condition and repair, in at least the condition as existed on the Closing Date, ordinary wear and tear excepted, (ii) maintain the Property and each portion thereof on a nondiscriminatory basis taking into account other properties owned, leased or operated by Lessee, (iii) maintain the Property and each portion thereof in accordance with the requirements of all of

the other Operative Documents, applicable Warranties and all insurance policies relating to the Property maintained with respect to the Property or required to be maintained hereunder and in compliance with Applicable Laws, (iv) make repairs, improvements, replacements (of parts, equipment, components, fixtures and improvements) and alterations to the Property as may be required by Applicable Laws and as necessary to keep the same in the condition required by the preceding clauses (i) through (iii), whether interior or exterior or relating to parking areas, road access or otherwise, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen and regardless of whether such expenditures would constitute expenses under GAAP if made by the owner of the Property. Without limitation of the foregoing and subject to Article XII, Lessee shall replace any Equipment that has become lost, stolen, destroyed, worn out or otherwise not usable in accordance with its intended purposes in the same manner as such Equipment is available for use on the Closing Date. Except to the extent replaced in accordance with the maintenance and other obligations of the Lessee hereunder, no portion of the Equipment shall be removed from the Property.

### Section 8.03. Alterations.

(a) Provided that no Lease Event of Default has occurred and is continuing, at any time and from time to time, Lessee, at its sole cost and expense (1) may make non-structural and structural Alterations to the Property, without any notice or consent; and (2) shall make structural or non-structural Alterations required by Applicable Law; provided that notice thereof shall be provided to the Lessor if the estimated cost of any Alteration exceeds \$500,000.00; provided further that no elective Alteration shall (i) impair the utility, remaining useful life or current or residual fair market value of the Property or any portion thereof, in each case assuming that the Improvements are then being operated and maintained in accordance with this Article VIII, (ii) cause the Property or any portion thereof to be characterized as "limited use property" (as described in Section 4.09 of Revenue Procedure 75-28 or Revenue Procedure 76-30), (iii) result in the removal of any built-in equipment or fixtures currently on the Property (unless such equipment or fixtures are replaced with similar equipment and fixtures) or any parts on or attached to the Equipment (unless such parts are replaced with similar or improved parts), (iv) reduce the square feet of the Improvements on the Property, or (v) increase in any material respect the risk of liability to the Lessor or any Indemnity under any Environmental Laws, other Applicable Laws or otherwise.

(b) Every Alteration shall comply with the following terms (which compliance shall be at Lessee's sole cost and expense): (i) to the extent costing more than \$500,000.00 the Alteration shall be made under the supervision of a certified architect or civil engineer who shall be licensed in the appropriate jurisdiction, (ii) the structural integrity of the existing Improvements will not be impaired and the value, utility and remaining useful life of the Equipment will not be adversely affected, (iii) Lessee shall obtain any licenses or permits required, copies of which shall be delivered to Lessor upon written request, (iv) such Alterations will not encroach upon any adjacent premises unless appropriate easements and consents shall have been obtained and, to the extent necessary or prudent filed in all appropriate land records or other recording offices. In connection with any Alteration, Lessee shall perform and complete all work in a good and workmanlike manner in compliance with Applicable Laws without the imposition of any Liens, assessments or encumbrances other than Permitted Liens or Permitted Encumbrances. Lessee shall either (i) maintain or cause to be maintained at all times during construction (x) builder's risk insurance naming Agent as the named insured and (y) commercial general liability insurance required under this Lease naming each Indemnity as additional insureds or (ii) self insure the risks otherwise insured by the policies required hereunder, which self insurance shall be subject to, and available only upon satisfaction of, the provisions of Section 9.01(b).

Section 8.04. Title to Alterations.

Title to Alterations shall without further act vest in Lessor (except to the extent replacing or becoming a part of the Equipment, in which case title to such Alterations shall vest in the Head Lessor) and shall be deemed to constitute a part of the Property and be subject to this Lease in the following cases:

- (a) such Alteration shall be in replacement of or in substitution for a portion of the Improvements or other Property as of the date hereof,
- (b) such Alteration shall be required to be made pursuant to the terms of Section 8.02; or
- (c) such Alteration shall be Nonseverable.

Lessee shall, at Lessor's request and at Lessee's sole cost and expense, execute and deliver any deeds, bills of sale or assignments reasonably requested by Lessor to evidence the vesting of title in and to such Alterations in Lessor (or Head Lessor to the extent relating to the Equipment). If an Alteration is not within any of the categories set forth in Section 8.04(a) through Section 8.04(c), then title to such Alteration shall vest in Lessee and may be removed by Lessee to the extent permitted in accordance with Article X hereof. All Alterations to which title shall vest in Lessee as aforesaid, and all Lessee's Equipment and Personality, so long as removal thereof shall not result in the violation of any Applicable Laws or this Lease, may be removed at any time by Lessee; provided that Lessee shall, at its expense, repair any damage to the Property caused by the removal of such Alteration or Lessee's Equipment and Personality and shall restore the Property to substantially the same condition as existed prior to such Alteration being made. Lessee shall provide "AS-BUILT" plans and a new survey (meeting the requirements of the original survey) for any Alterations costing in excess of \$2,000,000 determined on an aggregate basis. Once such \$2,000,000 aggregate threshold has been met, Lessee shall be required to provide "AS-BUILT" plans and a new survey on each other occasion where additional Alterations in the aggregate exceed \$2,000,000.

Section 8.05. Compliance with Law: Environmental Compliance: Engineering Matters.

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(a) Lessee, at Lessee's expense, shall comply in all material respects at all times with all Applicable Laws, including Environmental Laws, shall conduct its operations on the Property in accordance in all material respects with Applicable Laws and shall cause all of its activities on the Property, and use reasonable efforts to cause all of its activities about the Property, to comply in all material respects with Applicable Laws. Such compliance includes, without limitation, Lessee's obligation, at its expense, to take Remedial Action when required by Applicable Laws (in accordance with Applicable Law and this Lease) whether such requirement is now or hereafter existing. In the event that Lessee is required or elects to enter into any plan relating to a material remediation of the Property with respect to any Environment Laws, Lessee shall on a quarterly basis (or more frequently if reasonably requested by Lessor) apprise Lessor of the status of such remediation plan and provide copies of all material correspondence, plans, proposals, contracts and other documents relating to such action and plan or proposed plan.

(b) Lessee shall notify Lessor within ten (10) days if (i) Lessee becomes aware of the presence of any Hazardous Material at, on, under, emanating from, or migrating to, the Property in any quantity or manner, which could reasonably be expected to violate in any material respect any Environmental Law or give rise to any liability or the obligation on the part of the Lessee or Lessor to take Remedial Action or other obligations under any Environmental Law, or (ii) Lessee receives any notice, claim, demand or other communication from a Governmental Authority or a third party regarding the presence of any Hazardous Material at, on, under, within, emanating from or migrating to the Property which could reasonably be expected to violate any Environmental Law or give rise to any liability or to remediation or other obligations under any Environmental Law. If any event described in this sub clause (b) requires Remedial Action, the provisions set forth in sub clause (e) below will apply mutatis mutandis.

(c) (i) In the event there exists any site condition, circumstance, activity, practice, incident, action or plan, whether ongoing or in the past, and that is reasonably likely to result in: (a) a current or future violation of or liability under any Environmental Law, or (b) the presence, on or after the date hereof, of any Hazardous Material that requires Remedial Action at, on, under, in connection with, or which is migrating from, the Property ("Areas of Environmental Concern"), then Lessee, at its sole cost and expense, shall, as soon as reasonably practicable, but in any event within six months of the identification of such Area of Environmental Concern, or such later date as may be required by the applicable governmental agency or agencies, develop and finalize a work plan prepared by an Approved Environmental Consultant which sets forth all Remedial Action to be undertaken in connection with each Area of Environmental Concern identified at or relating to the Property (the "Plan"), and shall provide such Plan to Lessor. Lessor shall have the right to review and comment on such Plan prior to submission of the Plan to the applicable governmental agency or agencies. Lessee shall promptly perform, or cause to be performed on its behalf, all Remedial Action required under the Plan or otherwise necessary under the terms of this Lease to obtain Final Governmental Approval (as hereinafter defined) and shall diligently pursue such Remedial Action to completion, in accordance with the requirements of any Environmental Law or applicable governmental agency. Lessee shall on a quarterly basis (or more often if reasonably requested) apprise Lessor of the status of such Plan, and provide copies of all material correspondence, drafts of such Plan, agreements, documents, notices and other documentation existing with respect to the Plan and/or Area of Environmental Concern. In addition to the requirements in subparagraphs (a) and (b) above, and in connection with any actions undertaken pursuant to this Agreement, Lessee shall in all material respects at all times comply with all applicable Environmental Laws and with all other applicable federal, state and local laws and shall use an Approved Environmental Consultant to perform any Remedial Action.

(ii) Within thirty (30) days prior to the date that Remedial Action shall be required to be completed with respect to any Area of Environmental Concern (the "Required Remedial Action Date"), Lessee shall request and when obtained submit to Lessor written confirmation from the applicable governmental agency that no further Remedial Action is required to be taken ("Final Governmental Approval").

(iii) In the event that Final Governmental Approval is not received by Lessor by the Required Remedial Action Date, Lessee shall provide Lessor, within thirty (30) days after the Required Remedial Action Date, with a bond, letter of credit or similar financial assurance, in each case satisfactory to the Lessor that sufficient funds are available to pay for the completion of any remaining Remedial Action required of Lessee and to obtain receipt of Final Governmental Approval; provided, however, so long as Lessee maintains at least an Investment Grade rating and acknowledges to Lessor its intent to complete such Remedial Action, no bond, letter of credit or similar financial assurance shall be required. Lessee covenants to notify the Lessor in the event that Lessee does not have at least an Investment Grade rating.

(d) Based upon the initial Environmental Reports required to be delivered to Lessor with respect to the Property, the Lessee shall be required to perform the acts set forth on Schedule 8.05(d) hereof. All such acts shall be required to be performed within six (6) months of the Closing Date, and upon completion of such acts, Lessee shall provide prompt notice to Lessor.

(e) Engineering reports prepared on behalf of Lessor with respect to the Real Property evidenced certain defects and matters to be corrected as set forth on Schedule 8.05(e). Lessee shall proceed with reasonable diligence to perform the tasks and correct the matters described in Schedule 8.05(e) in a good and workmanlike manner and otherwise so as to comply with the terms of the Lease; provided, that such tasks shall be performed and matters corrected as aforesaid in any event by the date that is six (6) months from the Closing Date.



## Section 8.06. Payment of Impositions.

Lessee, in accordance with Section 19.02, shall pay or cause to be paid all Impositions before any fine, penalty, premium, further interest or cost may be assessed or added for nonpayment, such payments to be made directly to the taxing authorities where feasible. If requested, Lessee shall deliver, to Lessor copies of receipts, canceled checks or other documentation reasonably satisfactory, to Lessor evidencing payment of Impositions and Lessee agrees to maintain in its records evidence of payment of real estate, personal property and other ad valorem taxes for a period of no less than eight (8) years. If any such Imposition may, at the option of the taxpayer, lawfully be paid in installments (regardless of whether interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same in installments; provided, however, upon return of the Property or any portion thereof under the terms of this Lease, Lessee shall pay any accrued but unpaid Impositions on the Property (together with accrued interest, if any) or such portion thereof that is being returned and shall pay all unpaid installments (together with accrued interest, if any) whether or not due. If a Lease Event of Default exists or a Lease Default shall have occurred and be continuing, Lessee shall pay to the Lessor, in monthly installments in amounts equal to the Impositions (or estimated to equal such Impositions) (together with accrued interest, if any) to be held and applied by the Lessor, including on such initial payment date such additional amount as shall be necessary to assure that together with the upcoming months' installment, the full amount of each Imposition (together with accrued interest, if any) shall have been received by Lessor prior to the due date of such Imposition. Lessee shall have the right to contest any Imposition, subject to the following: (i) such contest shall be at its sole cost, risk and expense, (ii) if the Imposition being contested is in the amount of \$500,000.00 or more, Lessee shall provide notice to Lessor within ten (10) days of such Imposition and contest and the grounds thereof, (iii) such contest shall be by appropriate legal proceedings conducted in good faith and with due diligence, (iv) such contest will operate to suspend the collection of, or other realization upon, such Imposition, from any Property or other interest of Lessor or any assignee, or from any Rent (or otherwise affect Lessee's obligation to pay, and Lessor's right to receive, Rent), (v) such contest will not adversely affect the Agent's Lien on any Property, the Head Lessor's rights under the Head Lease or with respect to the Equipment or Lessor's right to any Property, (vi) such contest will not interfere with the possession, use or occupancy or sale of any Property, (vii) such contest will not subject any indemnity to any civil or criminal liability or require the disclosure of Confidential Information of such Indemnity except upon terms and conditions acceptable to such Indemnity, and (viii) Lessee shall not postpone the payment of any Imposition for such length of time as shall permit the Property to become subject to a Lien created by such item being contested that is prior to the Lien securing the Indebtedness or any rights of Head Lessor in connection with the Equipment. Lessee shall pay any Imposition (and related costs) promptly after foregoing any contest or after receipt of a final adverse judgment, or after notice from Lessor that such contest is not being performed in accordance with the terms hereof.

Section 8.07. Adjustment of Impositions.

Impositions with respect to the Property for a billing period during which Lessee's obligation to indemnify Lessor pursuant to this Lease expires or terminates as to the Property shall be adjusted and prorated on a daily basis between Lessor and Lessee, whether or not such Imposition is imposed before or after such expiration or termination, and Lessee's obligation to pay its pro rata share thereof shall survive such expiration or termination; provided, that Lessee shall be required to pay any Impositions (together with accrued interest, if any) which it has elected to or has been permitted to pay in installments, until the due date of such installments.

Section 8.08. Utility Charges.

Lessee shall pay or cause to be paid all charges for electricity, power, gas, oil, water, telephone, sanitary sewer services and all other utilities used in or on the Property prior to and during the Lease Term, and such obligation on the part of Lessee shall survive the expiration or earlier termination of this Lease until all such outstanding balances for services rendered prior to or during the term of this Lease have been paid. Lessee shall have the right to select such service providers for the Property.

## ARTICLE IX

### INSURANCE

#### Section 9.01. Coverage.

(a) Lessee shall maintain insurance and insure the Property and the operations and liabilities related thereto at least to the same standards as applicable to comparable properties owned, operated or leased by it in accordance with prudent practice. Without limiting the foregoing, subject to

Section 9.01(b), Lessee shall maintain minimum insurance of the types, in the amounts and meeting the requirements set forth on Schedule 9.01(a) attached hereto and made a part hereof. Lessee represents that Schedule 9.01(a) sets forth the insurance maintained by Lessee as of the Closing Date, including self-insurance and deductible amounts, and that such insurance is in full force and effect as of the Closing Date.

(b) Subject to the approval of Lessor on the Rent Commencement Date, so long as (i) no Lease Event of Default exists or Lease Default has occurred and is continuing, (ii) Lessee's Adjusted Net Worth equals Two Hundred Million Dollars (\$200,000,000.00) or more and (iii) the long term senior unsecured debt of Lessee, if then rated, does not have a rating of less than Investment Grade and (iv) Lessee meets the self-insurance requirements of the NAIC for a "Bond Lease Credit Tenant Loan" on a continuing basis, Lessee shall be entitled to self-insure and/or have deductible amounts as it may elect (the "Self-Insurance Amount") against any and all risks it would otherwise be required to insure against under Section 9.01(a). Notwithstanding the foregoing, in the event that the Agent shall have determined that there has occurred a material adverse change in the credit quality of Lessee or a significant economic downturn in Lessee's particular industry, or the Agent otherwise determines in its reasonable discretion and based on quantitative criteria that the Self-Insurance Amount exceeds industry standards or an acceptable level as reasonably determined by the Holders, then the Agent shall provide notice to the Lessee setting forth the revised Self-Insurance Deductible Amount, specifying the reason or reasons for the downward adjustment to the Self-Insurance Amount and specifying any additional insurance required to be obtained by the Lessee hereunder. From the date of such notice, the Lessee shall have thirty (30) days in which to arrange for the insurance coverage to be obtained by the Lessee as required by Lessor, such insurance to be on the terms and conditions otherwise set forth where the Lessee's self-insurance right is not available or is not needed. Notwithstanding the fact that Lessee may at any time be permitted to self-insure pursuant to this Section 9.01(b), to the extent that (i) Lessee maintains a policy or policies of commercial general liability insurance with respect to the Property, Lessee shall cause each Indemnity to be named as an additional insured on such policy or policies and (ii) Lessee maintains a policy or policies of property insurance with respect to the Property, Lessee shall cause Agent (so long as any obligation under the Debt Documents remains to be satisfied) and, thereafter, Lessor to be named as a named insured on such policy or policies to the extent of their interests. So long as no Lease Default or Lease Event of Default exists, any loss payable under insurance policies maintained in respect of damage to the Property shall be paid to Lessee for losses less than \$500,000.

(c) Nothing in this Article IX shall prohibit the Lessee from maintaining at its expense insurance on or with respect to the Property, naming the Lessee

as insured and/or loss payee for an amount greater than the insurance required to be maintained under this Section 9.01, unless such insurance would conflict with or otherwise limit the availability of or coverage afforded by insurance required to be maintained under Section 9.01. Nothing in this Section 9.01 shall prohibit the Lessor from maintaining at its expense other insurance on or with respect to the Property or the operation, use and occupancy of the Property, naming the Lessor as insured and/or payee, unless such insurance would conflict with, cause the Lessor to be a coinsurer or otherwise limit or adversely affect the ability to obtain, or the cost of, the insurance required to be maintained under Section 9.01.

(d) Copies of policies required to be maintained under Schedule 9.01 (or certificates thereof indicating compliance with the provisions of this Article IX) shall be delivered to Lessor on each anniversary of the Closing Date and, in any event, thirty (30) days prior to the expiration of the applicable policy.

(e) Irrespective of the cause thereof, no Participant or any Affiliate of the foregoing shall be liable for any loss or damage to any buildings or other portion of the Property resulting from fire, explosion or any other casualty or event or circumstance. In the event of Lessee's failure to obtain or maintain the insurance called for under this Lease, Lessor shall have the right, together with Lessor's remedies set forth herein, to obtain the policies of insurance required under this Lease and to bill Lessee for the premium payments therefore, together with interest at the Default Rate, in each case as Supplemental Rent. No Person other than Lessee shall have any obligation to maintain insurance of any nature or type whatsoever.

(f) If the Property is in an area designated as a "flood prone" area pursuant to the Flood Disaster Protection Act of 1973, or any amendments or supplements thereto or is in a zone designated A or V, then Lessee shall comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973. In addition, Lessee will fully comply with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as each may be amended from time to time, and with any other Applicable Law concerning flood insurance to the extent it applies to the Property or any portion thereof

## **ARTICLE X**

### **RETURN OF PROPERTY TO LESSOR**

Section 10.01. Return of Property to Lessor.

Lessee shall, upon the expiration or termination of this Lease, and at its own expense, return the Property and each portion thereof, including without limitation the Equipment, to Lessor by surrendering the same into the possession of Lessor:

(a) free and clear of all Liens, except that Lessee shall have no responsibility or liability in respect of (i) Lessor Liens, (ii) any Lien created by the Debt Documents and (iii) any Lien created by the Head Lease; and

(b) in compliance with all Applicable Laws and in compliance with the maintenance conditions required by this Lease. All Alterations and Lessee's Equipment and Personality not removed by Lessee by the last day of the Lease Term (but in the event of a termination other than upon the expiration of the Base Term or any Renewal Term, within thirty (30) days after said termination of this Lease), other than those Alterations as to which title shall vest in Lessor pursuant to Section 8.04 (which may not be removed), shall be deemed abandoned in place by Lessee and shall become the property of Lessor. Lessee shall pay or reimburse Lessor for any reasonable, actual, out-of-pocket costs incurred by Lessor (i) in connection with the removal or disposal of such relinquished property (less the actual salvage value thereof), or (ii) to bring any Property into compliance with all Applicable Laws and the provisions hereof. The return of the Property shall survive the expiration or termination of this Lease.

Upon the return of the Property, Lessee shall deliver therewith:

(i) all transferable licenses, permits and the like by general assignment, without warranty or recourse;

(ii) as-built drawings including plans for HYAC, mechanical and electrical systems, to the extent available and a survey;

(iii) keys to the Property;

(iv) to the extent permitted by Applicable Law and contract or warranty, assignment of all maintenance contracts and existing warranties applicable to the Property or any portion thereof by general assignment, without warranty or recourse;

(v) a Phase I Environmental Site Assessment recently prepared (no more than sixty (60) days prior to the date of return) by an Approved Environmental Consultant which Phase I Environmental Site Assessment shall evidence no Areas of Environmental Concern requiring further assessment or Remedial Action; and

(vi) unless otherwise directed by the Lessor, the Equipment shall be disassembled and placed in a state of readiness so as to permit such Equipment to be picked up by a shipper designated by Lessor for immediate loading without the necessity of additional labor, cost or expense.

In the event that the Property is not timely returned meeting the requirements hereof, Lessee shall be required to continue paying Rent as provided herein.

Notwithstanding anything herein to the contrary, Lessee may elect to return the Equipment on any anniversary of the commencement date of the Base Term or any applicable Renewal Term commencing with the thirteenth anniversary of the commencement date of the Base Term. In the event that the Lessee desires to elect to return such Equipment, the Lessee shall provide written notice to Lessor and Head Lessor at least one (1) year prior to the anniversary of the commencement date of the Base Term (or any Renewal Term, as the case may be) in which Lessee desires to return the Equipment. Upon the return of the Equipment, Lessee shall be required to disassemble and place such Equipment in a state of readiness to permit such Equipment to be picked up by a shipper designated by Lessor for immediate loading without the necessity of additional labor, cost or expense. In addition, Lessee shall otherwise have fulfilled its obligations under this Section 10.01 with respect to the Equipment. Upon proper election of Lessor to return the Equipment and timely compliance by Lessee with the provisions hereof, "Property" shall no longer be deemed to include the Equipment or any interest therein.

## ARTICLE XI

### ASSIGNMENT BY LESSEE

#### Section 11.01. Assignment by Lessee.

So long as no Lease Default or Lease Event of Default has occurred and is continuing, Lessee may, at Lessee's sole expense, without the consent of Lessor, assign this Lease to any Person; provided, however, that any such Person or other Person is not (I) a tax-exempt entity (within the meaning of Section 168(h) of the Code) or (II) a debtor or debtor-in-possession in a voluntary or involuntary bankruptcy proceeding at the commencement of the assignment; provided, however, that no such assignment shall become effective until (i) a fully executed copy of an assignment and assumption agreement, substantially in the form of Exhibit A attached hereto, shall have been delivered to Lessor, and (ii) such assignee shall have executed such instruments and other documents and provided such further assurances as Lessor shall reasonably request to ensure that such assignment is expressly subject and subordinate to the Assignment of Lease, the other Debt Documents, the Head Lease and this Lease and is enforceable in accordance with its terms. Any assignee shall assume in writing any obligations of Lessee arising from and after the effective date of the assignment. Notwithstanding any such assignment, Lessee shall not be released from its primary liability hereunder and shall continue to be obligated for all obligations of "Lessee" in this Lease, which obligations shall continue in full force and effect as obligations of a principal and not of a guarantor or surety, as though no assignment had been made. Lessee will have the right, subsequent to any assignment (a) to receive a duplicate copy of each notice of default sent by Lessor to Lessee or any assignee (but such notice shall be effective as against the Lessee, as well as any subsequent assignees, even if a copy has not been delivered to such requesting assignee), and (b) to cure any default by Lessee or other assignee under the Lease within the cure period provided for hereunder. Lessee's liability hereunder shall continue notwithstanding the rejection of this Lease by an assignee of this Lease pursuant to Section 365 of Title 11 of the United States Code, any other provision of the Bankruptcy Code, or any similar law relating to bankruptcy, insolvency, reorganization or the rights of creditors, which arises subsequent to such assignment. In the event Lessee assigns this Lease and it shall thereafter be rejected in a bankruptcy or similar proceeding, a new lease identical to this Lease shall be reinstated as between Lessor and Lessee without further act of any party; provided Lessor shall not be obligated to deliver to Lessee possession of the Property. Nothing herein shall be construed to permit Lessee to mortgage, pledge, hypothecate or otherwise collaterally assign in any manner or nature whatsoever Lessee's interest under this Lease in whole or in part. Lessee shall provide written notice to Lessor, Agent and Head Lessor of any assignment of this Lease within ten (10) Business Days prior to the effective date thereof and an executed copy of the agreement of assignment and assumption within thirty (30) days after the execution thereof. To the extent an assignee of this Lease fails to perform on behalf of Lessee the obligations of Lessee hereunder, and Lessee performs such obligations, then Lessee shall be subrogated to the rights of Lessor as against such assignee in respect of such performance.

## ARTICLE XII

### LOSS; DESTRUCTION; CONDEMNATION OR DAMAGE

#### Section 12.01. Event of Loss.

If there shall occur an Event of Loss with respect to the Property, Lessee shall give Lessor prompt written notice thereof and elect, within thirty (30) days after the occurrence of the Event of Loss, one of the following options (provided that Lessee's election of proceeding under clauses (b) or (e) shall be effective only if restoration or substitution, as the case may be, can be completed by the time specified in such clauses (b) and (c)):

(a) Offer to purchase the Property from Lessor, on a date specified in such notice, which date shall be a date for which a value is set forth on Schedule 12.01 hereto (the "Termination Value Date") occurring not less than ninety (90) days and not more than one hundred fifty (150) days after the date of such Event of Loss, for a purchase price equal to the sum of (i) the Termination Value for the Property, determined as of such Termination Value Date, plus (ii) all unpaid Rent with respect to the Property due and (without duplication) all Rent with respect to the Property accruing, but unpaid through such Termination Value Date, plus (iii) an amount equal to the reasonable out-of-pocket expenses of any Indemnity relating to the purchase, if any, by Lessee as a result of such Event of Loss including reasonable attorneys' fees and costs actually incurred. Lessor shall have sixty (60) days from the date of receipt of Lessee's offer to decide whether to reject such offer, otherwise Lessor shall be deemed to have accepted such offer;

(b) Restore and rebuild the Improvements and Fixtures and repair and replace the Equipment damaged or destroyed as a result of such Event of Loss so as to have at least a value, utility, condition, operating function and remaining useful life equal to the value, utility, condition, operating function and remaining useful life of the Property immediately prior to such Event of Loss (assuming compliance with this Lease), and in all events in the condition required by Section 8.02, such restoration and replacement to be completed the earlier to occur of (x) the first anniversary of the Event of Loss, or (y) six months prior to the expiration of the Lease Term (and Lessee shall remain liable for the completion of such restoration beyond the expiration of the Lease Term to the extent not completed prior to such expiration and shall pay Base Rent (or Renewal Rent as the case may be) and Supplemental Rent with respect to the Property from the date of expiration to the date of completion); or

(c) Offer to substitute for the Property a Substitute Property in compliance with Article XXIII, such substitution to be completed within the earlier of (A) one hundred eighty (180) days after an Event of Loss and (B) six months prior to the expiration of the Lease Term. Upon consummation of the substitution under Article XXI, Net Proceeds, if any, relating to the Withdrawn Property shall be paid to or retained by Lessee. Lessor shall have thirty (30) days from the date of receipt of Lessee's offer to accept such offer; if such offer is not accepted within such time period, then Lessor shall be deemed to have rejected such offer and Lessee shall proceed under clauses (a) or (b).

If Lessee makes an offer to purchase pursuant to clause (a) above of this Section 12.01, and Lessor accepts such offer or is deemed to accept such offer (taking into account the last sentence of Section 12.01(a)) within the sixty

(60) day period referred to in the last sentence of clause (a) above, Lessee shall pay to Lessor the Termination Value and Rent described in said clause (a) not later than the Termination Value Date; provided that any Net Proceeds related to the Property then held by Lessor (or its assignee or designee) shall be credited against the portion of such Termination Value payable to Lessor and the balance of Net Proceeds, if any, shall be paid to or retained by Lessee. Concurrently with the payment in full of the amounts payable pursuant to said clause (a), the terms of Article XIII shall be complied with.

In the event Lessee has made the election described in either (b) or (c) above and, notwithstanding diligent efforts in good faith, has failed to comply with terms thereof within the periods described, then Lessee shall be deemed to have made the offer described in (a) above to purchase the Property and the Termination Value Date shall be deemed to be the next succeeding date set forth on Schedule 12.01 occurring thirty (30) days after the expiration of the period described in (b) or (c) (as applicable), or if there is no such date, the last date on Schedule 12.01, as the case may be.

In the event Lessor rejects the offer of Lessee to purchase the Property as provided in clause (a) of this Section 12.01, the following amount shall be paid to or retained by Lessor on such Termination Value Date: (A) all Net Proceeds related to the Property; provided that, if Lessee is self-insured (as permitted above) by means of deductibles, retained risks or no insurance whatsoever, Lessee shall pay such amounts and any additional amounts so that Lessor receives in total (including any Net Proceeds) an amount that would have been paid by a third-party insurer under a customary commercial all-risk full replacement-value insurance policy substantially similar to that described in Schedule 9.01 without deductibles or retained risks replacement value of the Improvements immediately preceding the Event of Loss, shall be as mutually agreed between Lessee and Lessor and, failing such agreement within fifteen (15) days of the request of either party to do so, by the Appraisal Procedure), plus (B) unpaid Rent due with respect to the Property on such Termination Value Date.

Upon payment in full of the amounts set forth in clauses (A) and (B) of the preceding sentence (in the event Lessor rejected Lessee's offer) or clause (a) of the first sentence of this Section 12.01 (in the event Lessor accepted Lessee's offer to purchase), (1) the Lease Term shall end, and (2) the obligations of Lessee hereunder (other than any obligations expressed herein as surviving termination of this Lease) with respect to such Property shall terminate as of the date of such payment.

If Lessor elects to reject the offer of Lessee hereunder to purchase the Property pursuant to this Section 12.01 while the Indebtedness under the Debt Documents is outstanding or the Head Lease has not expired by its terms or otherwise been terminated, any notice of rejection shall only be effective, and Lessor shall only be entitled to reject such offer, if such notice is concurrently consented to in writing by the Agent on behalf of the Holders or by the Head Lessor or both the Agent and the Head Lessor, as the case may be, and absent such required consent by the applicable Persons within the sixty (60) day period referred to in the last sentence of the clause (a) above, Lessor shall be deemed to have accepted Lessee's offer.



Section 12.02. Application of Payments Upon an Event of Loss When Lease Continues.

Subject to Section 12.04, payments received at any time by Lessor or Lessee from any Governmental Authority or other Person with respect to any Event of Loss in a case in which this Lease will not terminate (and there will occur no abatement or reduction of rent) because Lessee has elected to proceed under clause (b) of Section 12.01, shall be paid to Lessee to be applied, as necessary, to the repair or restoration of the Property as described in clause

(b) of Section 12.01. Lessee shall retain any excess insurance proceeds remaining thereafter and any excess condemnation award remaining thereafter shall be paid to Lessor to be applied to reduce the Indebtedness.

Section 12.03. Application of Payments Not Relating to an Event of Loss.

In case of a Condemnation or Casualty which is not an Event of Loss or which does not result in a termination of this Lease in accordance with the above provisions of Article XII, this Lease shall remain in full force and effect, without any abatement or reduction of Rent; provided, however, Lessee acknowledges that any Condemnation or Casualty with respect to the Equipment that does not result in an Event of Loss with respect to the Property shall require that the Equipment be replaced, repaired, restored so as to have at least a value, utility, condition, operating function and remaining useful life equal to the value, utility, condition, operating function and remaining useful life of the Equipment immediately prior to such occurrence (assuming compliance with this Lease). Subject to Section 12.04, all Net Casualty Proceeds and all Net Condemnation Proceeds, as the case may be, shall be paid to Lessee to be applied, as necessary, to the repair, restoration and replacement of the Property so such Property (including the Equipment) shall have a value, utility, condition, operating function and remaining useful life to the value, utility, condition, operating function and remaining useful life existing immediately prior to such Casualty or Condemnation (assuming compliance with this Lease). Any excess insurance proceeds remaining thereafter shall be retained by Lessee and any excess condemnation award remaining thereafter shall be paid to Lessor to be applied to reduce the Indebtedness.

Section 12.04. Other Dispositions

(a) If Net Casualty Proceeds or Net Condemnation Proceeds exceed \$500,000.00 (each, as applicable, the "Restoration Fund") in respect of such Casualty or Condemnation, as the case may be, then all Net Casualty Proceeds or Net Condemnation Proceeds shall be paid to the Proceeds Trustee for release to Lessee as restoration progresses, subject to and in accordance with Section 12.04(b). Lessor and Lessee hereby authorize and direct any insurer, to make payment under policies of casualty insurance required to be maintained by Lessee pursuant to Section 9.01(a) directly to the Proceeds Trustee instead of to Lessor; and each of Lessee and Lessor hereby appoints the Proceeds Trustee as its attorney-in-fact to endorse any draft therefor for the purposes set forth in this Lease. In the event that a Casualty shall occur at such time as Lessee is self-insured (as permitted above) by means of deductibles, retained risks or no insurance where Net Casualty Proceeds would have exceeded \$500,000.00 from a third-party insurer under a customary commercial all-risk full replacement-value insurance policy substantially similar to that described in Schedule 9.01, Lessee shall, within thirty (30) days of the Casualty, pay to the Proceeds

Trustee the amount of the proceeds that would have been payable had such insurance been in effect (determined in the manner provided in the fourth full paragraph of Section 12.01) and such amount shall constitute a part of the Restoration Fund for all purposes hereof Notwithstanding the foregoing provisions of this Article XII, so long as a Lease Event of Default exists or a Lease Default shall have occurred and be continuing, any amount that would otherwise be payable to or for the account of Lessee pursuant to this Article XII shall be paid to the Servicer (if a Servicer has been and continues to be engaged to receive Rent) as security for the obligations of Lessee under this Lease and at such time thereafter as the Lease Event of Default shall have been waived and the Lease Default shall no longer be continuing, unless Lessor shall be exercising its remedies under Section 17.01, such amount shall be paid promptly to Lessee or the Proceeds Trustee in accordance with this Lease.

(b) The Restoration Fund, if any, shall be disbursed by the Proceeds Trustee by wire transfer of immediately available funds within five (5) Business Days of the last submission made pursuant to and in accordance with the following conditions (provided that there shall be no more than one disbursement during each month):

(i) At the time of any disbursement, no Lease Event of Default exists and no Lease Default shall have occurred and be continuing and no mechanics' or materialmen's liens shall have been filed and remain undischarged, unbonded or not insured over.

(ii) Disbursements (subject to the holdback in Section 12.04(b)(iv) below) shall be made from time to time in an amount not exceeding the hard and soft costs of the work and costs incurred since the last disbursement upon receipt of (1) satisfactory evidence, including architects' or engineers' certificates, of the stage of completion, of the estimated cost of completion and of performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications, (2) partial releases of liens in respect of the disbursement made pursuant to the immediately preceding request, and (3) other reasonable evidence of costs incurred (whether or not paid) so that the Proceeds Trustee is able to verify that the amounts disbursed from time to time are represented by work that is completed in place or delivered to the site and free and clear of (or such claims have been bonded or insured over), mechanics' and materialmen's lien claims.

(iii) Each request for disbursement shall be accompanied by a certificate of Lessee (1) agreeing to use amounts disbursed for the costs described in Section 12.04(b)(ii), (2) describing the work, materials or other costs or expenses for which payment is requested, (3) stating the costs incurred in connection therewith, (4) to the extent Lessee has not paid amounts equal to self-insured retentions to the Proceeds Trustee, stating that Lessee has paid costs and expenses for such work in an amount equal to the self insured and/or deductible amounts (and attaching thereto evidence thereof reasonable satisfactory to Lessor) and (5) stating that Lessee has not previously received payment for such work or expense and the certificate to be delivered by Lessee upon completion of the work shall, in addition, state that the work has been substantially completed and complies with the applicable requirements of this Lease.

(iv) The Proceeds Trustee shall retain ten percent (10%) of the amounts otherwise disbursable until the repair, restoration and replacement are at least fifty percent (50%) complete, and thereafter five percent (5%) until the repair, restoration and replacement are substantially complete.

(v) The Restoration Fund shall be kept by the Proceeds Trustee in a separate interest-bearing federally insured account or invested in Permitted Investments (as directed by, or on behalf of, Lessee).

(vi) At all times the undisbursed balance of the Restoration Fund held by the Proceeds Trustee shall be not less than the cost of completing the repair, restoration and replacement, free and clear of all liens (other than Permitted Liens, which term for purposes hereof shall exclude Liens of the type described in clause (d) of the definition of Permitted Liens other than Liens for amounts not yet due or that are bonded over or insured over), and in the case of any deficiency, the Lessee shall be required to deposit an amount equal to such deficiency into the Restoration Fund.

(vii) In addition, prior to commencement of repair, restoration and replacement and at any time during such repair, restoration and replacement, if the estimated cost of repair, restoration and replacement, as reasonably determined by the Proceeds Trustee, exceeds the then amount of the Restoration Fund, the amount of such excess shall be paid by Lessee to the Proceeds Trustee to be added to the Restoration Fund or Lessee shall fund at its own expense the costs of such repair, restoration and replacement until the remaining Restoration Fund is sufficient for the completion of the repair, restoration and replacement. In the case of Casualty, any sum in the Restoration Fund which remains in the Restoration Fund upon the completion of repair, restoration and replacement shall be paid to Lessee. In the case of Condemnation, any sum in the Restoration Fund which remains in the Restoration Fund upon the completion of repair, restoration and replacement shall be paid to Lessor. Lessor shall use such remaining sum to reduce the Indebtedness, if any.

The Proceeds Trustee shall be retained at the cost, expense and risk of the Lessee.

#### Section 12.05. Negotiations.

In the event the Property becomes subject to Condemnation or requisition proceedings, Lessee shall control the negotiations with the relevant Governmental Authority, unless: (i) a Lease Event of Default exists or a Lease Default shall have occurred and be continuing, or (ii) the Net Condemnation Proceeds will likely be in excess of \$500,000.00 (which determination shall be made in Lessor's reasonable discretion), in which case Lessor (or if the Debt Documents are in effect, the Agent) at Lessee's expense may elect in writing to control such negotiations; provided that in any event Lessor may elect to participate at Lessee's expense in such negotiations. Lessee shall give to Lessor such information, and copies of such documents, which relate to such proceedings and are in the possession of Lessee, as are reasonably requested by Lessor. Lessor shall use good faith efforts to be reasonable when incurring expenses payable by Lessee hereunder and shall confer with Lessee as to any negotiations with Governmental Authorities material to Lessee's operations. Notwithstanding the foregoing, in jurisdictions where a separate award may be wanted for Lessee's Equipment and Personality, moving and relocation expenses, business loss, business damages, loss of goodwill, unamortized costs of any Alterations title for which has not vested in Lessor or Head Lessor pursuant to the terms of this Lease, and Lessee's attorneys' fees, costs and expenses in the proceedings, Lessee may assert claims for and control the negotiations pertaining to such interests; provided that the Lessor's award in respect to the Property is not diminished by the award to Lessee. Similarly, and notwithstanding the foregoing, in jurisdictions where a separate award may be wanted for any portion of the Equipment, Head Lessor may assert claims for and control the negotiations pertaining to such interests; provided that the Lessor's award in respect to the Property is not diminished by the award to Head Lessor; provided, further, if a Lease Event of Default exists or a Lease Default shall have occurred and be continuing, such award shall be paid to the Proceeds Trustee to be applied as set forth in the Intercreditor Agreement.

## **ARTICLE XIII**

### **CONVEYANCE OF PROPERTY TO LESSEE**

#### Section 13.01. Conveyance of Property to Lessee.

Upon the purchase of Lessor's rights in the Property by Lessee pursuant to Article XII or Section 17.04, Lessor shall convey to Lessee or its designee (x) such Property "as-is," "where-is" and in then present physical condition by a limited warranty deed with a warranty against grantor's acts and a bill of sale with respect to the Equipment and (y) all rights, title and interest of Lessor in and to any Net Proceeds (if any), with respect to the Property, free and clear of (i) all Lessor Liens arising under the Lessor but with no other representation or warranty of any kind and (ii) the Liens created by the Debt Documents and the Head Lease.

## **ARTICLE XIV**

### **SUBLEASE**

#### Section 14.01. Subleasing Permitted; Lessee Remains Obligated.

Provided that no Lease Event of Default exists and no Lease Default shall have occurred and be continuing at the time the sublease is entered into, upon ten (10) days' prior written notice to Lessor, Lessee may at any time and from time to time sublease all or any portion of the Property to one or more Persons or permit the occupancy of the Property or any portion or portions thereof by one or more Persons; provided, that each such Person must not be (i) a tax-exempt entity (within the meaning of Section 168(h) of the Code) or (ii) a debtor or debtor-in-possession in a voluntary or involuntary bankruptcy proceeding at the commencement of the Sublease (defined below) term; provided, further, there shall be no more than five (5) Subleases permitting occupancy by Persons other than the Lessee at any time, and no Sublease shall result in any structural alteration or modification to the Property or any portion thereof. Any such sublease, sub-sublease, license, occupancy agreement or similar agreement (each, a "Sublease") shall not release Lessee from its primary liability for the performance of its duties and obligations hereunder, and Lessee shall continue to be obligated for all obligations of "Lessee" in this Lease, which obligations shall continue in full effect as obligations of a principal and not a guarantor or surety, as though no Sublease had been made. Lessee shall furnish to Lessor within thirty (30) days after the execution of each Sublease (i) a copy of such Sublease (and the previously executed Subleases still in effect, if applicable) and (ii) such other instruments and documents as the Lessor shall reasonably request to ensure that such Sublease is expressly subject and subordinate to the Debt Documents, the Lease and the Head Lease and meets the requirements hereof.

Section 14.02. Provisions of Subleases.

Each Sublease shall:

- (a) be expressly subject and subordinate to this Lease, any mortgage encumbering the Property and the Head Lease;
- (b) not extend beyond the Lease Term minus one day;
- (c) not conflict with or result in a conflict with or violation of any provision of the Lease, any Debt Documents or the Head Lease; and
- (d) the sub lessee shall be bound by all covenants contained in Sections 8.01, 8.02 and 8.05 with respect to subleased premises to the same extent as if the sub lessee were the Lessee.

Any Sublease shall not have any term or provision that conflicts with any term or provision hereof or any other Operative Document and, to the extent that such Sublease has obligations not in conflict with, but different from, the obligations of Lessee hereunder, such sublease must establish an arrangement to permit the obligations of Lessee hereunder to be fulfilled in a manner reasonably acceptable to Lessor.

**ARTICLE XV**

**INSPECTION**

Section 15.01. Inspection.

Upon three (3) days prior written notice to Lessee (or promptly after notice (which may be by telephone or facsimile transmission) if a Lease Default or Lease Event of Default shall exist) Lessor, Agent, each Holder, FSL Group and Head Lessor, and their respective representatives and agents (each, an "Inspecting Party"), may, in a commercially reasonable manner, inspect the Property, including, without limitation, the right to cause consultants to make structural, environmental (to the extent necessary to verify & compliance with the provisions of this Lease) and/or other inspections or tests (it being understood that all Subleases shall provide for such inspection rights by the Inspecting Parties). The Inspecting Party shall minimize damage and repair any damage caused by any inspection or test performed pursuant to Section 15.01. All such inspections and tests shall be at the Inspecting Party's expense, unless

(i) a Lease Event of Default exists or a Lease Default shall have occurred and be continuing or (ii) such inspection and/or test results establish that Lessee is required to take any action in order to comply with the Lease. In either such case, the cost of such inspection and/or test shall be promptly paid by Lessee no later than thirty (30) days from the date of invoice. Further, upon prior notice to Lessee, each Inspecting Party, at its expense, may inspect the books and records relating to the maintenance and care of the Property during the term of this Lease, that are in the possession of Lessee, which shall be made available at the Property or the headquarters of the Lessee. Except in connection with any inspection or test during the existence of a Lease Default or Lease Event of Default, each Participant agrees to conduct any inspection or test in a manner that will minimize interference with the business and operations conducted by Lessee on the Property, and any such inspection or test (other than during the existence of a Lease Default or Lease Event of Default) shall be conducted during normal business hours.

## ARTICLE XVI

### LEASE EVENTS OF DEFAULT

#### Section 16.01. Lease Events of Default.

The following events shall constitute a "Lease Event of Default":

- (a) Lessee shall fail to make any payment of Interim Rent, Base Rent or Renewal Rent or Termination Value within three (3) days of the date when due;
- (b) Lessee shall fail to make any payment of Supplemental Rent when due and such failure shall continue for five (5) days;
- (c) Lessee shall fail to make any payment required under any other Operative Document, other than any amount described in clause (a) or clause (b) of this Article XVI, and such failure shall continue for a period of ten (10) days after notice of such failure to Lessee from Lessor or other Person to whom Lessee is required to make such payment;
- (d) Lessee shall fail to timely perform or observe any covenant or agreement (other than any covenant or agreement whereby the breach thereof constitutes a Lease Event of Default under any other provision of this Section 16.01) to be performed or observed by it hereunder or under any other Operative Document to which it is a party and such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor, the Agent or the Head Lessor; provided that the continuation of such a failure for thirty (30) days after such notice shall not constitute a Lease Event of Default up to an additional thirty (30) days so long as such failure cannot reasonably be cured within such thirty (30) day period, and Lessee shall be diligently and continuously prosecuting the cure of such failure and shall have advised the Lessor in writing of the steps it is taking and will take to remedy such Lease Default. The parties hereto acknowledge that the foregoing cure period shall not be construed to limit the period set forth in Section 8.05 afforded to Lessee thereunder to take any required Remedial Action and obtain Final Governmental Approval;
- (e) except to the extent the Lessee is permitted to self-insure pursuant to Section 9.01 and Schedule 9.01, Lessee shall fail to carry or maintain in full force any insurance required hereunder;
- (f) any representation or warranty made by Lessee herein or in any Operative Document to which Lessee is a party or delivered in connection with the foregoing shall prove to have been incorrect in any material respect when such representation or warranty was made;
- (g) (A) Lessee makes any general arrangement or assignment for the benefit of creditors; (B) Lessee becomes a "debtor" as defined in 11 U.S.C. ss. 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (C) the appointment of a trustee or receiver to take possession of substantially all of the assets of Lessee where possession is not restored to Lessee within sixty (60) days; or (D) the attachment, execution or other judicial seizure of substantially all of the assets of Lessee where such seizure is not discharged within sixty (60) days; or
- (h) Lessee shall have assigned or otherwise transferred its right, title and interest in and to this Lease, or subleased the Property, in violation of Article XI or Section 14.01, as the case may be.

## ARTICLE XVII

### ENFORCEMENT

#### Section 17.01. Remedies.

Upon the occurrence of any Lease Event of Default and at any time thereafter, Lessor may, at its option, by notice to Lessee do one or more of the following as Lessor in its sole discretion shall determine:

(a) Lessor may, by notice to Lessee, terminate this Lease as of the date specified in such notice; provided (i) no reletting, reentry or taking of possession of any or all of the Property by Lessor will be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee, (ii) notwithstanding any reletting, reentry or taking of possession, Lessor may at any time thereafter elect to terminate this Lease with respect to any or all of the Property, and (iii) no act or thing done by Lessor or any of its agents, representatives or employees and no agreement accepting a surrender of any or all of the Property shall be valid unless the same be made in writing and executed by Lessor;

(b) Lessor may (i) demand that Lessee, and Lessee shall upon the written demand of Lessor, return the Property promptly to Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of, Article X as if the Property were being returned at the end of the Lease Term, and Lessor shall not be liable for the reimbursement of Lessee for any costs and expenses incurred by Lessee in connection therewith, and (ii) without prejudice to any other remedy which Lessor may have for possession of the Property, enter upon the Property and take immediate possession of (to the exclusion of Lessee and any sub lessee) the Property and expel or remove Lessee and any other Person who may be occupying the same, by summary proceedings or otherwise, all without liability to Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise and in addition to Lessor's other damages. Lessee shall be responsible for the reasonably necessary costs and expenses of reletting actually incurred. The provisions of this Date next succeeding the Final Payment Date plus any Make-Whole Premium over, at the Lessor's option, the Fair Market Sales Value or Fair Market Rental Value (determined on an "as-is," "where-is" basis and, in the event of any dispute, based upon an appraisal prepared by an appraiser selected by Lessor) for the Property (or allocable portion thereof), and in the case of Fair Market Rental Value determined over the remainder of the Base Term after discounting such Fair Market Rental Value to the present value as of such Final Payment Date at the Reference Rate.

(f) Lessor may retain and apply against Lessor's damages all sums, which Lessor would, absent such Lease Event of Default, be required to pay to, or turn over to, Lessee pursuant to the terms of this Lease;

(g) Lessor may exercise any other right or remedy that may be available to it under Applicable Laws or in equity, or proceed by appropriate court action (legal or equitable) to enforce the terms hereof or to recover damages for the breach hereof. Separate suits may be brought to collect any such damages for any period or periods with respect to which Rent shall have accrued, and such suits shall not in any manner prejudice Lessor's right to collect any such damages for any subsequent period, or Lessor may defer any such suit until after the expiration of the Base Term or the then current Renewal Term, in which event such suit shall be deemed not to have accrued until the expiration of the Base Term, or the then current Renewal Term.

#### Section 17.02. Survival of Lessee's Obligations.

No repossession of any or all of the Property or exercise of any remedy under this Lease, including termination of this Lease, shall, except as specifically provided herein, relieve Lessee of any of its liabilities and obligations hereunder, including the obligation to pay Rent. In addition, except as specifically provided herein, Lessee shall be liable for any and all unpaid Rent due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and expenses and other costs and expenses incurred by any Participant by reason of the occurrence of any Lease Default or Lease Event of Default or the exercise of Lessor's remedies with respect thereto, and including all costs and expenses incurred in connection with the return of the Property in the manner and condition required by, and otherwise in accordance with the provisions of, Article X as if the Property were being returned at the end of the Lease Term. At any sale of any or all of the Property or any other rights pursuant to Section 17.01, any Participant (excluding the Lessor in the case of any event of default by the Lessor under the Debt Documents not arising from a Lease Event of Default) or Affiliate thereof may bid for and purchase the Property or any portion thereof.

#### Section 17.03. Remedies Cumulative: No Waiver: Consents.

To the extent permitted by, and subject to the mandatory requirements of, Applicable Laws, each and every right, power and remedy herein specifically given to Lessor (and any assignee) or otherwise in this Lease shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Lessor, and the exercise or the beginning of the exercise of any power or Section 17.01(b) shall operate as a notice to quit and shall be deemed to satisfy any other requirement or provisions of Applicable Laws which may require Lessor to provide a notice to quit or of Lessor's intention to re-enter any or all of the Property and any such requirements or provisions are hereby waived by Lessee. Whether or not the Lease is terminated, Lessor shall be entitled to enter the Property and may remove the Equipment;



(c) Lessor may hold, keep idle or lease to others the Property as Lessor in its sole discretion may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect to such action or inaction;

(d) Lessor may sell the Property (or any portion thereof) at public or private sale, as Lessor may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or any proceeds with respect thereto (except to the extent required by the next succeeding sentence if Lessor shall elect to exercise its rights thereunder), in which event Lessee's obligation to pay Base Rent or Renewal Rent, as the case may be, hereunder for periods commencing after the Termination Value Date next succeeding the date of such sale shall be terminated. If Lessor shall have sold any of the Property pursuant to the above terms of this Section 17.01(d), Lessor may demand that Lessee pay to Lessor, and Lessee shall pay to Lessor as Supplemental Rent, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (the parties agreeing that Lessor's actual damages would be difficult to predict, but the liquidated damages described below represent a reasonable approximation of such amount), in lieu of Base Rent (or Renewal Rent, as the case may be) in respect of the Property due for the period commencing on the Termination Value Date next succeeding the date of sale, an amount equal to (i) all unpaid Rent due on or prior to, and (without duplication) all unpaid Rent accruing but unpaid through, such Termination Value Date, plus (ii) an amount equal to the excess, if any, of (I) the Termination Value for the Property (or allocable portion thereof) determined as of the Termination Value Date next succeeding the date of sale plus any Make-Whole Premium over (II) the net proceeds of such sale (after deduction of all costs and expenses of such sale including, without limitation, sales or transfer taxes, recording fees and stamp and documentary taxes, costs incurred to ready the Property for sale and brokers' and attorneys' fees), plus (iii) interest at the Default Rate on all of the foregoing amounts from such Termination Value Date until the date of actual payment;

(e) Lessor may, whether or not Lessor shall have exercised or shall thereafter at any time exercise any of its rights under Section 17.01(a), (b) or

(c), demand by written notice to Lessee specifying a payment date (the "Final Payment Date") not earlier than twenty (20) days after the date of such notice, that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the Final Payment Date, as liquidated damages for loss of a bargain and not as a penalty (the parties agreeing that Lessor's actual damages would be difficult to predict, but the aforementioned liquidated damages represent a reasonable approximation of such amount), in lieu of Base Rent for periods commencing after the Final Payment Date, an amount equal to the sum of (i) all unpaid Rent with respect to the Property due on or prior to, and (without duplication) all unpaid Rent accruing but unpaid through, such Termination Value Date plus (ii) the following (together with interest on such sum at the Default Rate from the Final Payment Date specified in such notice to the date of actual payment): an amount equal to the excess, if any, of the Termination Value for the Property (or allocable portion thereof) determined as of the Termination Value remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy; provided, however, Lessor shall not be entitled to duplicative damages in the case of the cumulative exercise of remedies. No delay or omission by Lessor in the exercise of any right, power or remedy or in the pursuit of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of Lessee or to be an acquiescence therein. Lessor's (or any other Person's) consent to any request made by Lessee shall not be deemed to constitute or preclude the necessity for obtaining Lessor's (or such other Person's) consent, in the future, to all similar requests. No express or implied waiver by Lessor of any Lease Default or Lease Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Lease Default or Lease Event of Default.

#### Section 17.04. Lessee's Right of Rejectable Offer.

Upon the occurrence and during the continuance of a Lease Event of Default (but so long as no Lease Event of Default shall have occurred under Section 16.01(g)), Lessee shall have the right for a period equal to ten (10) days from the date of Lessee's knowledge of such Lease Event of Default to offer to buy the Property from the Lessor for an amount equal to the greater of the Fair Market Sales Value thereof (determined on an "as is," "where is" basis, and in the event of any dispute, based upon an appraisal prepared by an appraiser selected by Lessor) or Termination Value, together with any Make-Whole Premium. In the event that Lessor accepts such offer within fifteen (15) Business Days of receipt of the offer (or Lessor is deemed to have accepted such offer), Lessee shall be required to pay the purchase price as set forth above, together with all unpaid Rent due on or prior to, and (without duplication) all unpaid Rent accruing but unpaid through the date the purchase price is paid and interest at the Default Rate on the foregoing amounts until the date of actual payment together with other amounts owing by the Lessee under the Operative Documents and all costs and expenses attendant to any Lease Event of Default. Notwithstanding anything herein to the contrary, if such offer shall not have been rejected within the fifteen (15) Business Days referenced above then such offer shall be deemed to have been accepted by Lessor and the provisions of Section 13.01 shall apply without further action unless the Lessee and Lessor shall have otherwise agreed in writing that such offer shall not be deemed to have been accepted and shall continue for an additional period, which period shall be specified by such parties.

If Lessor elects to reject the offer of Lessee hereunder to purchase the Property pursuant to this Section 17.04 while the Indebtedness under the Debt Documents is outstanding or the Head Lease has not expired by its terms or otherwise been terminated, any notice of rejection shall only be effective, and Lessor shall only be entitled to reject such offer, if such notice is concurrently consented to in writing by the Agent on behalf of the Holders or by the Head Lessor or both the Agent and the Head Lessor, as the case may be, and absent such required consent by the applicable Persons within the time period prescribed herein, Lessor shall be deemed to have accepted Lessee's offer.

## ARTICLE XVIII

### RIGHT TO PERFORM FOR LESSEE

#### Section 18.01. Right to Perform for Lessee.

If Lessee shall fail to perform or comply with any of its agreements contained herein within the applicable periods permitted herein prior to such failure to perform or comply constituting a Lease Default or Lease Event of Default, Lessor or Agent may (but shall not be required to) perform or comply with such agreement, and Lessor shall not thereby be deemed to have waived any default caused by such failure, and the amount of payment required to be made by Lessee hereunder and made by Lessor or Agent on behalf of Lessee, and the reasonable costs and expenses of Lessor and Agent (including reasonable attorneys' fees and expenses) incurred in connection with the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Default Rate, shall be deemed Supplemental Rent, payable by Lessee to Lessor or Agent upon demand. In addition, during the continuance of a Lease Default or Lease Event of Default in respect of Lessee's obligations under

Section 8.02 and/or Section 8.05, then, in addition to the rights above and at the cost of Lessee, (a) Lessor and Agent shall have the right to hire Persons (as selected by Lessor or Agent in its reasonable discretion) to cure such Lease Default or Lease Event of Default, and to take any and all other actions necessary to cure such Lease Default or Lease Event of Default, and (b) Lessee shall cooperate with Lessor and Agent, and the Persons hired by Lessor or Agent, in the performance of such cure, including, without limitation, (i) providing access to the subject Property at reasonable times every day of the week, (ii) making available water, electricity and other utilities existing at or on the subject Property, and (iii) restricting or closing the Property, but only if such restriction or closure is reasonably necessary for the performance of such cure and provided that such closure shall be done for and during a time period and in such manner that balances the need for the maintenance or repair of the Property (and doing so in a safe manner) and the continuing operations of the Property.

## ARTICLE XIX

### INDEMNITIES

#### Section 19.01. General Indemnification.

(a) Lessee agrees to assume liability for, and to indemnify, protect, defend, save and keep harmless each Indemnity, on an After-Tax Basis, from and against any and all Claims that may be suffered, imposed on or asserted against any Indemnity, arising out of (i) the acquisition, ownership, leasing, subleasing, assignment, transfer of title, sale, financing (including without limitation any Make-Whole Premium) refinancing, renewal, return, disposition, operation, possession, use, non-use, maintenance, modification, alteration, reconstruction, restoration, substitution or replacement of the Property (or any portion thereof) or the Lease, or from the granting by Lessor at Lessee's request of easements, licenses or any rights with respect to all or any part of the Property, or from the construction, design, purchase or condition of the Property (including any Claims arising, directly or indirectly, out of the actual or alleged presence, use, storage, generation, Release of any Hazardous Materials, and any Claims for patent, trademark or copyright infringement and latent or other defects, whether or not discoverable), including any liability under Applicable Laws (including, without limitation, any Claims arising directly or indirectly out of any actual or alleged violation, now or hereafter existing, of any Environmental Laws), (ii) the Operative Documents or any modification, amendment or supplement thereto, (iii) the non-compliance of the Property with Applicable Laws (including because of the existence of the Permitted Liens or Permitted Encumbrances), (iv) any matter relating to all or any part of the Property or any operations thereon, including matters relating to Environmental Laws or Hazardous Materials, (v) the breach by Lessee of its representations, warranties, covenants and obligations in this Lease or any other Operative Documents whether or not such Claim arises or accrues prior to the date of this Lease, (vi) the business and activities of Lessee, (vii) the business and activities of any other Person on or about the Property (whether as an invitee, sub lessee, licensee or otherwise), (viii) the cost of assessment,

containment and/or removal of any and all Hazardous Materials from all or any portion of the Property or any surrounding areas for which Lessee has any legal obligation, the cost of any actions taken in response to a Release of any Hazardous Materials on, in, under or affecting any portion of the Property or any surrounding areas for which Lessee has any legal obligation to prevent or minimize such Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with Environmental Laws in connection with all or any portion of the Property or any surrounding areas for which Lessee has any legal obligation, and (ix) a Lease Default or Lease Event of Default (including Claims arising from such event's causing a default under the Head Lease or Debt Documents). Lessee acknowledges that the foregoing includes any costs incurred by any Indemnity in performing any inspections of any Property if such inspection reveals a violation by Lessee of Section 8.05.

(b) In case any Claim shall be made or brought against any Indemnity, such Indemnity shall give prompt notice thereof to Lessee; provided that failure to so notify Lessee shall not reduce Lessee's obligations to indemnify any Indemnity hereunder unless and only to the extent such failure results in additional liability on Lessee's part. Lessee shall be entitled, at its expense, acting through counsel selected by Lessee (and reasonably satisfactory to such Indemnity), to participate in, or, except as otherwise provided, to assume and control (if it promptly so elects upon notice of the Claim), and, to the extent that Lessee desires to assume and control, in consultation with Indemnity, the negotiation, litigation and/or settlement of any such Claim (subject to the provisions of the last sentence of subparagraph (c) of this Section 19.01). Such Indemnity may (but shall not be obligated to) participate at its own expense (unless Lessee is not properly performing its obligations hereunder and then at the expense of Lessee) and with its own counsel in any proceeding conducted by Lessee in accordance with the foregoing, in which case Lessee shall keep such Indemnity and its counsel fully informed of all proceedings and filings and afford such Indemnity and counsel reasonable opportunity for comment. Notwithstanding the foregoing, Lessee shall not be entitled to assume and control the defense of any Claim if (i) a Lease Event of Default exists or a Lease Default has occurred and is continuing, (ii) the proceeding involves possible imposition of any criminal liability or penalty or unindemnified civil penalty on such Indemnity, (iii) the proceeding involves the granting of injunctive relief against the Indemnity not related to the transactions contemplated by the Operative Documents, (iv) a significant counterclaim is available to the Indemnity that would not be available to and cannot be asserted by Lessee, (v) a conflict of interest exists between the Indemnity and Lessee with respect to the Claim, or (vi) the defense of such Claim would require the delivery of material confidential and proprietary information of such Indemnity that would otherwise not be available to Lessee or its counsel.

(c) Each Indemnity shall at Lessee's expense supply Lessee with such non-confidential and non-privileged information and documents reasonably requested by Lessee in connection with any Claim for which Lessee may be required to indemnify any Indemnity under this Section 19.01 and otherwise necessary for the performance of its obligations hereunder. So long as no Lease Event of Default exists and no Lease Default shall have occurred and be continuing, no Indemnity shall enter into any settlement or other compromise with respect to any Claim for which indemnification is required under this Section 19.01 without the prior written consent of Lessee which consent shall not be unreasonably withheld or delayed. Lessee shall have the authority to settle or compromise any Claim against an Indemnity hereunder; provided that no admission of wrongdoing shall be required of such Indemnity and such Indemnity shall be released of all liability in connection with any such Claim pursuant to a release in form and substance acceptable to such Indemnity.

(d) Upon payment in full of any Claim by Lessee pursuant to this Section 19.01 to or on behalf of an Indemnity, Lessee, without any further action, shall be subrogated to any and all Claims that such Indemnity may have relating thereto (other than claims in respect of insurance policies maintained by such Indemnity at its own expense or claims against another Indemnity for which Lessee would have indemnity obligations hereunder), and such Indemnity shall execute such instruments of assignment and conveyance, evidence of Claims and payment and such other documents, instruments and agreements as may be necessary to preserve any such Claims and otherwise reasonably cooperate with Lessee to enable Lessee to pursue such Claims.

(e) Notwithstanding anything to the contrary contained herein, Lessee shall not be required to indemnify any Indemnity under this Section 19.01 for any Claim to the extent resulting from the affirmative negligence (i.e., negligence arising from actions taken by such Indemnity rather than resulting from such Indemnities failure to act), willful misconduct or breach in any material respect of a representation or warranty of such Indemnity.

#### Section 19.02. General Tax Indemnification.

(a) Except as provided in Section 19.02(b), Lessee agrees to indemnify each Tax Indemnity against, and hold each Tax Indemnity harmless from, on an After-Tax Basis, and to pay in accordance with Section 19.02(f): (i) any and all Taxes of any United States federal taxing authority, state or political subdivision or taxing authority, thereof or therein which are imposed or levied upon or assessed against or with respect to or in connection with (A) any such Tax Indemnity, the Lessee, any tenant, subtenant or other user of the Property, any Secured Note or any amounts and expenses payable thereunder, any financing or refinancing, in any case arising under, out of or in connection with or relating to the Operative Documents, the Property or any portion thereof or the transactions or activities contemplated by the Operative Documents, (B) the Property, or any part or interest therein, or any additions, modifications or improvements thereto, or any estate, right, title, or any occupancy, operation, possession of or sales from or any other activity conducted on or about the Property or any damage to, removal, abandonment, salvage, loss, condemnation, theft, scrapping, destruction of any requisition or taking thereof (C) Interim Rent, Base Rent, Renewal Rent, Supplemental Rent or other sums payable under this Lease or any other Operative Document (including, in each case, any amendment, supplement, waiver or consent thereto), (D) this Lease or any other Operative Document (including, in each case, any amendment, supplement, waiver or consent thereto) or the leasehold estate hereby created or any interest therein, or which arise in respect of the operation, possession or use or disposition, after the acquisition thereof by a Tax Indemnity, of all or any portion of the Property or any part thereof or interest therein, or which arise at the end of the Lease Term, if any, or (E) any leasing, subleasing, sub-subleasing or use of the Property or any part thereof or interest therein, (ii) other governmental charges or Taxes imposed upon the Property or any part thereof or interest therein or upon a Tax Indemnity as a result of ownership of the Property or any part thereof or interest therein (including, without limitation, sewer or water assessments), (iii) payments required to be made to a governmental or quasi-governmental authority (or private entity in lieu thereof) which are in lieu of each of the foregoing (whether or not expressly so designated) and (iv) any interest, penalties or additions to tax payable by the Tax Indemnity in connection with any of the foregoing (any such amounts described in the foregoing clauses, being deemed to be a "Tax" for purposes of this Section 19.02).

(b) Notwithstanding anything to the contrary contained herein, Lessee will have no obligation under this Section 19.02 with respect to amounts described in any one or more of the following:

(i) in the case of any Tax Indemnity, (A) Taxes (other than Taxes that are, or are in the nature of, sales, use, property, ad valorem, rental, stamp, transfer, ad valorem, excise or license taxes and other than any withholding tax arising from a change in Applicable Law after the Closing Date) imposed on the net income of such Tax Indemnitee by the United States federal government under the Code (including any taxes that are, or are in the nature of minimum or alternative minimum taxes, and any taxes on or measured by any items of tax preference), (B) Taxes (other than taxes that are, or are in the nature of, sales, use, property, ad valorem, rental, stamp, transfer, excise or license taxes and other than any withholding tax arising from a change in Applicable Law after the Closing Date) imposed on such Tax Indemnitee by the state in which the Property is located or any local jurisdiction therein on, based on or measured by net income (including any minimum taxes or taxes on items of tax preference) or net receipts or gross income or gross receipts, or taxes that are in the nature of intangibles taxes or (C) Taxes (other than taxes that are, or are in the nature of, sales, use, property, ad valorem, rental, stamp, transfer, excise or license taxes and other than any withholding tax arising from a change in Applicable Law after the Closing Date) imposed on such Tax Indemnitee by the state in which the Property is located or any local jurisdiction therein that are imposed on capital or net worth, excess profits or conduct of business, or (D) Taxes imposed by any foreign or domestic government or taxing authority (other than the United States or any states or any local government or taxing authority in any of the states), except in each case, to the extent imposed as a result of (v) the execution or delivery, of any Operative Document in such jurisdiction, (w) the identity, organization, activities or presence of the Lessee or any Affiliate of the Lessee in such jurisdiction, (x) the Lessee's or any Affiliate's of the Lessee making of any payment (or being deemed to have made payments) under the Operative Documents from the jurisdiction imposing such Taxes or (y) a change in Applicable Law after the Closing Date; provided that there shall not be excluded under this clause (I) any amounts necessary to make any payment required to be made under the Operative Documents on an After-Tax Basis; provided further, that there shall not be excluded under this clause (I) any Taxes which are in lieu of or in replacement of any Taxes otherwise indemnified herein;

(ii) Taxes with respect to any Tax Indemnitee attributable to any (1) voluntary sale, assignment, transfer or other disposition (collectively, a "Transfer") by such Tax Indemnitee of any interest in the Property or any part thereof or any interest therein or any interests or obligations arising under the Operative Documents (other than to the Lessee, an Affiliate or any designee of the foregoing), (2) any involuntary transfer of any of the foregoing interests resulting from any bankruptcy or other proceeding for the relief of debtors in which such Tax Indemnitee is a debtor, (3) any foreclosure by a creditor of such Tax Indemnitee; provided, however, this clause (ii) shall not apply to any such sale, assignment, transfer or other disposition occurring as a result of and so long as a Lease Default or Lease Event of Default has occurred and is continuing (it being understood that any transfer or disposition expressly permitted by Articles XI, XIII or XIV of the Lease arising by operation of the Operative Documents or requested by the Lessee is not a voluntary sale, assignment, transfer or other disposition and any transfer in connection with a Casualty or Condemnation, an assignment, sublease or transfer by Lessee of any interest in the Property or merger, consolidation or other restructuring of Lessee or at the direction of Lessee shall not be deemed to be a voluntary sale, assignment, transfer or other disposition);

(iii) Taxes imposed against or payable by a Tax Indemnitee to the extent imposed with respect to any period after the expiration or earlier termination of this Lease (in either case provided that, if required, possession of the Property has been returned and the Lessee's obligation to pay Base Rent or Renewal Rent, as the case may be, under the Lease has been extinguished) other than pursuant to the exercise of remedies in connection with a Lease Default or Lease Event of Default; provided that the exclusion in this clause (iii) shall not apply to the extent such Taxes are imposed with respect to any payments due under the Operative Documents after such expiration or earlier termination;

(iv) Taxes imposed against or payable by such Tax Indemnitee as a result of the gross negligence, willful misconduct or fraud of such Tax Indemnitee;

(v) any Tax that would have been imposed on a particular Tax Indemnitee without regard to the transactions contemplated by the Operative Documents;

(vi) Taxes or liabilities resulting from any prohibited transaction described in Section 406 or 407 of ERISA or Section 4975(c) of the Code or any successor provisions thereto that may arise in connection with any transaction contemplated by the Operative Documents, other than any such Taxes that are imposed as a result of a breach of a representation by, or an act or omission of, the Lessee;

(vii) Taxes that would not have been imposed but for an amendment, supplement, modification, consent or waiver to any Operative Document to which Lessee or any Affiliate thereof is not a party or that has not been initiated or consented to by Lessee or any Affiliate thereof in writing unless in each case (1) such amendment, supplement, modification, consent or waiver is required or permitted by the Operative Documents or Applicable Law, (2) is necessary or appropriate to, and is in conformity with any other amendment, supplement, modification, consent or waiver to any Operative Documents initiated, requested by or consented to by the Lessee or any Affiliate thereof in writing or (3) arises from a Lease Event of Default;

(viii) With respect to any Tax Indemnitee, Taxes resulting from or that would not have been imposed but for the existence of Lessor Liens arising under such Tax Indemnitee;

(ix) With respect to any Tax Indemnity, Taxes that could not have been imposed but for any failure of such Tax Indemnitee to comply with Section 19.02(h) hereof but only so long as such compliance would not expose such Tax Indemnitee (in the Tax Indemnitee's good faith opinion) to any cost or expense for which Lessee shall not have agreed to indemnify such Tax Indemnitee; provided, however, that the exclusion set forth in this clause

(xiv) shall not apply if such failure to comply is due to a failure of the Lessee to provide reasonable assistance or response in complying with such request.

(c) Reimbursement. If Lessee shall have paid any amount pursuant to the Lease or any other Operative Document or Applicable Laws with respect to or on account of Taxes not subject to indemnification pursuant to this Section 19.02, the Tax Indemnitee on whose behalf such Taxes were paid shall pay to Lessee within thirty (30) days (the "Reimbursement Date") of written notice of such payment by Lessee the amount so paid by Lessee (or Person making payment on behalf of Lessee), together with interest thereon at the Default Rate after the Reimbursement Date.

(d) Calculation of General Tax Indemnity Payments. Any payment or indemnity to or for the benefit of any Tax Indemnitee with respect to any Tax which is subject to indemnification under Section 19.02(a) shall (A) reflect the current net savings available to such Tax Indemnitee or any Affiliate thereof (computed at the highest marginal rates of federal, state and local tax then applicable to corporations) resulting from the current deduction of such indemnified Tax, but only to the extent that such indemnified Tax is deductible for federal, state and local tax purposes, and (B) include, after taking into account the savings described in clause (A), the amount necessary to hold such Tax Indemnitee harmless on an After-Tax Basis. If, by reason of any payment made to or for the account of a Tax Indemnitee by Lessee pursuant to Section 19.01 or this Section 19.02, or the event or circumstance giving rise to such payment, such Tax Indemnitee or any Affiliate thereof or any transferee, successor or assignee thereof, actually realizes a net tax benefit, savings, deduction or credit not taken into account in computing such payment; provided no Lease Default or Lease Event of Default has occurred and is continuing (in which case any amount payable to Lessee on account of such tax benefit, savings, deduction or credit shall not be due unless and until such Lease Default or Lease Event of Default is cured), such Tax Indemnitee shall promptly pay to Lessee an amount equal to the sum of (I) the net reduction in Taxes, if any, realized by such Tax Indemnitee or any Affiliate thereof which is attributable to such net tax benefit, savings, deduction or credit and (II) the net reduction in any Taxes realized by such Tax Indemnitee or any Affiliate thereof as the result of any payment made by such Tax Indemnitee pursuant to this sentence. Notwithstanding the foregoing, no Tax Indemnitee shall be required to make any payment to the Lessee pursuant to this Section 19.02(d) to the extent payments by the Tax Indemnitee to the Lessee under this Section 19.02(d) (without regard to amounts necessary to make such payments on an After-Tax Basis) would exceed, in the aggregate, at any time, the amount of all prior payments made by or on behalf of the Lessee to such Tax Indemnitee (without regard to amounts necessary to make such payments on an After-Tax Basis) less the amount of all prior payments made by the Tax Indemnitee to the Lessee (without regard to amounts necessary to make such payments on an After-Tax Basis) pursuant to this Section 19.02(d), but any such excess shall reduce pro tanto any amount (without regard to amounts necessary to make such payments on an After-Tax Basis) that the Lessee is subsequently obligated to pay such Tax Indemnitee pursuant to this Section 19.02.

(e) Contests. If any written claim shall be made against any Tax Indemnitee or if any proceeding shall be commenced against any Tax Indemnitee (including a written notice of such proceeding) for any Taxes as to which Lessee may have an indemnity obligation pursuant to Section 19.02, such Tax Indemnitee shall promptly notify Lessee in writing and shall not take any action with respect to such claim or Tax without the consent of Lessee for thirty (30) days after sending such notice to Lessee; provided that, in the case of any such claim or proceeding, if such Tax Indemnitee shall be required by law or regulation to take action prior to the end of such 30-day period, such Tax Indemnitee shall, in such notice to Lessee, so inform Lessee, and such Tax Indemnitee shall not take any action with respect to such claim or Tax without the consent of Lessee (not to be unreasonably withheld) before ten (10) days from the receipt of such notice by Lessee unless the Tax Indemnitee shall be required by law or regulation to take action prior to the end of such 10 day period; provided, that failure to so notify Lessee shall not affect Lessee's obligations to indemnify hereunder except to the extent that Lessee is precluded from any contest and actually and materially harmed thereby. If requested by Lessee in a written request to such Tax Indemnitee within thirty (30) days (or such shorter period referred to in the proviso to the first sentence in this Section 19.02(e)) after its receipt of such notice, such Tax Indemnitee (i) in the case of a Tax which may be contested independently (without joinder, contribution or otherwise) from any Tax that is not subject to indemnification by the Lessee, shall permit Lessee to in good faith contest (including, without limitation, by pursuit of appeals and administrative procedures) (any such contest a "Lessee-Controlled Contest"), or (ii) in the case or a contest which is not a Lessee-Controlled Contest shall itself or, at such Tax Indemnitee's request, the Lessee shall, in good faith contest (including, without limitation, by pursuit of appeals and administrative procedures), the validity, applicability or amount of such Indemnified Taxes (A) by resisting payment thereof, (B) by not paying the same except under protest (which protest must be pursued using reasonable efforts in appropriate administrative and/or judicial proceedings) if protest shall be necessary and proper or (C) if payment shall be made, by using reasonable efforts to obtain a refund thereof in appropriate administrative and/or judicial proceedings; provided that in no event shall such Tax Indemnitee be required to contest any claim for any Tax unless (1) it is not a Lessee-Controlled Contest;

(2) the amount at issue (taking into account all similar and logically related claims with respect to the transactions contemplated by the Operative Documents that have been or could have been raised in an audit by the taxing authority in question for any other taxable period with respect to which an assessment of a tax deficiency is not barred by a statute or limitations, including, without limitations, such claims that may arise in future periods) exceeds \$25,000.00;

(3) the Tax that is the subject of such contest is a Tax for which Lessee may have an indemnity obligation hereunder; (4) Lessee shall have agreed to pay such Tax Indemnitee and shall pay on an After-Tax Basis as incurred all reasonable costs and expenses that such Tax Indemnitee shall incur in connection with contesting such claim (including, without limitation, all reasonable costs, expenses, legal and accounting fees and disbursements); (5) the action to be taken will not result in any material danger of a sale, forfeiture or loss of, or the creation of any Lien against the Property (except if Lessee shall have adequately bonded such Lien (in a manner reasonably acceptable to such Tax Indemnitee) or otherwise made provision to protect the interests of such Tax Indemnitee and Lessor in the Property or any interest therein (in a manner reasonably acceptable to such Tax Indemnitee) and that there is no risk that criminal or unindemnified or punitive civil liability may be imposed with respect to such Tax Indemnitee; (6) if such contest shall involve payment of the claim, Lessee shall advance the amount thereof plus interest, penalties and additions to tax with respect thereto to such Tax Indemnitee on an interest-free basis (with no additional net after tax cost to such Tax Indemnitee and without taking into account any net tax savings associated with such advance); (7) no Lease Default or Lease Event of Default under this Lease shall have occurred and be continuing (it being agreed that in such case, the Tax Indemnitee shall consult in good faith with Lessee to determine whether Lessee can provide to the Tax Indemnitee reasonably satisfactory security to cover its indemnity

obligations with respect to amounts to be contested and its obligations under the foregoing clause (4) of this proviso, in which case, such Event of Default shall not deprive Lessee of its contest rights hereunder); and (8) in the case of a contest which must be contested in the name of the Tax Indemnitee, prior to initiating the contest the Lessee shall have furnished the Tax Indemnitee with an opinion of an independent tax advisor selected by the Lessee and reasonably acceptable to the Tax Indemnitee ("Tax Counsel") to the effect that a reasonable basis exists for such contest. In no event shall the Tax Indemnitee be required to contest any claim required to be brought in its own name if the subject matter of such claim shall be of a continuing nature and shall have previously been the subject of an adverse final determination under the contest provisions of this Section 19.02(e), unless the Lessee shall have delivered to such Tax Indemnitee an opinion of Tax Counsel to the effect that as a result of a change in law or fact it is more likely than not that the Tax Indemnitee will prevail in the contest of such claim. Notwithstanding anything herein to the contrary, no Tax Indemnitee shall be required to provide to Lessee or its counsel any confidential information regarding its or any Affiliate's federal or state income tax reporting, and, in no event shall any contest related to federal, state or local income taxes of any Tax Indemnitee be subject to a Lessee-Controlled Contest unless requested by such Tax Indemnitee.

Lessee shall conduct any Lessee-Controlled Contest and the relevant Tax Indemnitee shall control any contest other than a Lessee-Controlled Contest, unless the Tax Indemnitee requests that the Lessee control such contest or declines in writing to control such contest. The party conducting the contest ("Controlling Party") shall consult in good faith with the other party ("Noncontrolling Party") and its counsel with respect to the contest of such claim for Taxes (or claim for refund) and shall permit review and comment on any material filings or other submissions (in the case of any Tax Indemnitee controlled contest so long as such filing or submission does not relate to any other contest of such Tax Indemnitee that is not subject to indemnity hereunder unless the portion of the filing or submission relating to such other contest can be readily severed from the portion of the filing or submission to be disclosed) but the decisions regarding all actions to be taken shall be made by the Controlling Party in its sole judgment (exercised in good faith). In addition, the Controlling Party shall keep the Noncontrolling Party reasonably informed as to the progress of the contest. The Controlling Party shall be responsible for the selection of counsel, which counsel must be reasonably satisfactory to the Noncontrolling Party.

Notwithstanding anything contained in this Section 19.02, a Tax Indemnitee shall not be required to contest any claim or permit Lessee to contest any claim and may settle any contest without the consent of Lessee if such Tax Indemnitee (A) shall waive its right to indemnity under this Section 19.02 with respect to such claim for such Tax (and any claim made by any taxing authority with respect to other taxable periods that is based upon the resolution of such claim, or the contest of which is materially prejudiced by the resolution of such claim), and (B) shall pay to Lessee any amount of Tax previously paid or advanced by Lessee pursuant to this Section 19.02 other than the costs and expenses of the contest of such claim paid by the Lessee in accordance with clause (x) of the proviso to the second preceding paragraph, together with interest thereon at the Applicable Federal Rate for the period such payments or advances were held.

If any Tax Indemnitee or any Affiliate thereof shall obtain a refund (including by way of credit) of all or any part of any Tax with respect to which the Lessee shall have paid on behalf of such Tax Indemnitee or reimbursed such Tax Indemnitee, then such Tax Indemnitee shall, so long as no Lease Default or Lease Event of Default shall have occurred and be continuing, pay to the Lessee any such refund (including any applicable interest received with respect to such refund or that would have been received with respect to such refund but for a counterclaim or other claim not indemnified by Lessee hereunder) plus any tax savings realized by such Tax Indemnitee as a result of a payment pursuant to this sentence (it being understood that the calculation of such tax savings shall take into account any additional income Taxes incurred by such Tax Indemnitee as a result of the receipt or accrual of such refund). A Tax Indemnitee shall not be obligated pursuant to this Section 19.02(e) to make a payment (i) before such time as the Lessee shall have made all payments then due under the Operative Documents and any Lease Default or Lease Event of Default that shall have occurred shall no longer be continuing or (ii) in excess of the amounts paid by Lessee to such Tax Indemnitee pursuant to this Section 19.02(e) in respect of the Taxes giving rise to such tax savings (minus any amounts previously paid to Lessee by such Tax Indemnitee pursuant to this Section 19.02(e) plus any applicable interest that would have been received with respect to such refund but for a counterclaim or other claim not indemnified by Lessee hereunder); provided that any such amounts not paid to Lessee pursuant to the limitation contained in clause (ii) of this sentence shall be carried forward to reduce, pro tanto, any future amounts that may become payable by the Lessee to such Tax Indemnitee pursuant to this Section 19.02(e) in respect of the Taxes giving rise to such tax savings. The disallowance, loss, recapture or reduction of any credit, refund or other tax savings with respect to which a Tax Indemnitee has made a payment to the Lessee under this Section 19.02(e) shall be treated as a Tax for which the Lessee is obligated to indemnify such Tax Indemnitee hereunder, without regard to the exclusions set forth in Section 19.02(b). The Tax Indemnitee shall make any payments to the Lessee under this Section 19.02(e) within thirty (30) days of the receipt of such refund.

(f) Payments. Any Taxes indemnified hereunder shall be paid by Lessee, to the extent allowed, directly to the appropriate taxing authority on or before the time, and in the manner, prescribed by Applicable Laws. Any amount payable to a Tax Indemnitee pursuant to this Section 19.02 shall be paid within thirty

(30) days after receipt of a written demand therefor from such Tax Indemnitee accompanied by a written statement describing in reasonable detail the amount so payable, but not before the date such Tax is due; provided, if any such amount is subject to contest hereunder, then such amount shall be paid within three (3) days of the resolution of the contest (or the earlier due date thereof). Any payments to be made by Lessee pursuant to this Section 19.02 that are not paid to the appropriate Governmental Authority shall be made directly to the Tax Indemnitee entitled thereto, and any payments to be made to Lessee pursuant to this Section 19.02 shall be made directly to Lessee, in each case in immediately payable funds at such bank or to such account as specified by the payee in written directions to the payor, or, if no such directions shall have been given, by check of the payor payable to the order of the payee and mailed to the payee by certified mail, postage prepaid at its address as set forth in this Lease. Any amount payable under this Section 19.02 that is not paid when due shall bear interest at the Default Rate.

(g) Verification. At Lessee's request, the amount of any indemnity payment by Lessee pursuant to this Section 19.02 or any payment by a Tax Indemnitee to Lessee pursuant to this Section 19.02 shall be verified by the certified public accountant who regularly prepares the tax returns for such Tax Indemnitee, who shall verify and certify in writing the accuracy of the Tax Indemnitee's computations. Notwithstanding the



foregoing, Lessor may request verification by a separate nationally recognized United States or international accounting firm selected by the Tax Indemnitee and reasonably acceptable to Lessee. The person or persons required to perform such verification (the "Verifier") shall be asked to verify, after consulting with the Tax Indemnitee, whether the Tax Indemnitee's computations are correct and to report its conclusions to both Lessee and the Tax Indemnitee. Each Tax Indemnitee and Lessee hereby agrees to provide the Verifier with all information and materials as shall be reasonably necessary or desirable in connection therewith; provided, however, that in no case shall the Verifier or any other Person be entitled to see the tax returns or the books and records of the Tax Indemnitee other than necessary excerpts thereof with respect to which the Verifier or such other Person has agreed to treat as confidential under an agreement in form and substance acceptable to the Tax Indemnitee. The fee of such Verifier (if such Verifier is an independent accounting firm) shall be paid by Lessee unless such verification discloses an error adverse to Lessee of 10% or more of the amount determined by such Verifier, in which case such fees shall be paid by the applicable Tax Indemnitee. The Verifier shall be requested to make its determination within thirty (30) days of its appointment. In the event such Verifier shall determine that such computations are incorrect, then such Verifier shall determine what it believes to be the correct computations. Notwithstanding anything herein to the contrary, the sole responsibility of the Verifier shall be to verify the computations of the amount payable; interpretations of this Agreement or any other Operative Documents are not within the scope of such Verifier's responsibilities.

(h) Forms etc. Each Tax Indemnitee agrees to furnish to Lessee from time to time, at the written request and expense of Lessee, such duly executed and properly completed forms as may be necessary or appropriate in order to claim any reduction of or exemption from any withholding or other Tax imposed by any taxing authority in respect of any payments otherwise required to be made by Lessee, as the case may be, pursuant to this Lease, which reduction or exemption is available to such Tax Indemnitee; provided that no Tax Indemnitee shall have any obligation to comply with any request or take any other action pursuant to this Section 19.02(h) if in order to comply with such request or take such action the Tax Indemnitee would be required to make any inaccurate statement or would be exposed (in Tax Indemnitee's good faith opinion) to any cost or expense for which Lessee shall not have agreed to indemnify such Tax Indemnitee or would subject such Tax Indemnitee to any material risk of audit of Taxes not subject to indemnity hereunder.

(i) Non-Panics. If any Tax Indemnitee is not a party to this Lease, Lessee may require the Tax Indemnitee, before making any payment to such Tax Indemnitee under this Section 19.02, to provide the Lessee in writing with an agreement executed by the Tax Indemnitee, as follows:

In consideration of the rights of the undersigned to payments from the Lessee pursuant to Section 19.02 of the Lease Agreement, dated as of June 1, 2000, between the Lessor thereof and the Lessee thereof, the undersigned hereby agrees and covenants that it is a "Tax Indemnitee" for the purposes of and shall be subject to the terms and conditions of Section 19.02 of the Lease and will make all payments and take such other actions as are required under Section 19.02 of the Lease.

(j) Filings. If any report, return or statement (a "Filing") is required to be filed with respect to any Tax that is subject to indemnification under this

Section 19.02 and, Lessee shall promptly provide notice to the appropriate Tax Indemnitee and, if permitted by Applicable Laws to do so, Lessee shall timely file or cause to be filed such Filing with respect to such Tax (except for any such Filing that a Tax Indemnitee has notified Lessee in writing that such Tax Indemnitee intends to file a copy of which shall be promptly furnished to Lessee after filing) and will (if ownership of the Property or any part thereof or interest therein is required to be shown on such Filing) show the ownership of the Property in the name of Lessor or the Head Lessor, as the case may be, and send a copy of such Filing to the appropriate Tax Indemnitee, and Tax Indemnitee shall furnish Lessee, at Lessee's request, with such information, not within the control of Lessee, as is in such Tax Indemnitee's control or is reasonably available to such Tax Indemnitee and necessary to file such Filing; provided, however Lessee shall pay all reasonable out-of-pocket expenses of the Tax Indemnitee in connection therewith. If Lessee is not permitted by Applicable Laws to file any such Filing, Lessee will promptly notify the appropriate Tax Indemnitee of such requirement in writing and prepare and deliver to the appropriate Tax Indemnitee a proposed form of such Filing within a reasonable time, and in all events at least fifteen (15) days prior to the time such Filing is required to be filed. In the case of any Filing either required to reflect items in addition to Taxes imposed on or indemnified against by the Lessee under this Section 19.02 or which the Tax Indemnitee has notified Lessee in writing that it will prepare and file, Lessee shall, upon the written request of such Tax Indemnitee, provide such Tax Indemnitee with such information as is within Lessee's reasonable control or access with respect to such Filing. Lessee shall hold each Tax Indemnitee harmless from and against any liabilities, including, but not limited to penalties, additions to tax, fines and interest, arising out of any insufficiency or inaccuracy in any such Filing, if such insufficiency or inaccuracy is attributable to Lessee. Lessee agrees to provide the Lessor with evidence of the payment of all ad valorem property and other similar Taxes with respect to the Property or any portion thereof within thirty (30) days of the date that each such Tax shall become due.

#### Section 19.03 Special Tax Indemnity.

(a) Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants to each of Head Lessor and Lessor as follows: (i) under current law, neither the Property as a whole nor the Equipment constitutes "limited use property" within the meaning of Revenue Procedure 76-30, 1976-2C.B. 647; (ii) neither Lessee nor any Affiliate will claim any depreciation or cost recovery deductions with respect to the Property or any portion thereof, and has taken or will take any other action in connection with filing its or their federal income tax returns that would be a primary factor resulting in a Loss or Inclusion (in each case, as defined in Section 19.03(b) below); (iii) as of the Closing Date with respect to the (I) Improvements and Fixtures and (II) the Equipment, such property will not require any improvement, modification or addition in order to be rendered complete for its intended use by Lessee; (iv) all written information supplied, caused to be supplied or to be supplied to any appraiser by or on behalf of Lessee or any Affiliate of Lessee with respect to the Property or any portion thereof was or will be, as the case may be, true and accurate when supplied; and (v) at no time during the Term will the Property or any portion thereof constitute "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(b) Indemnity Payment Conditions. If, by reason of any act or omission of Lessee or by any other Person in possession of the Property or any portion thereof or by reason of the inaccuracy or breach by Lessee of any of the representations, warranties and covenants contained in this Section 19.03, any anticipated depreciation deductions are lost, disallowed, eliminated, reduced, recaptured, compromised, delayed or otherwise made unavailable to Lessor (or Head Lessor with respect to the Equipment), as the case may be, (a "Loss") or Lessor or Head Lessor incurs a tax detriment because it is required to include amounts in income other than Anticipated Lease Income (an "Inclusion"), Lessee shall, upon notice from Lessor or Head Lessor promptly pay such Person on demand in immediately available funds, as an indemnity an amount which, on an After-Tax Basis, shall be equal to the sum of (x) the increase in federal, state and local income tax liability for the respective taxable year attributable to such Loss or Inclusion plus (y) the amounts of interest, penalties and additions to tax (including, without limitation, any additions to tax because of underpayment of estimated tax), which are assessed against Lessor or Head Lessor for such taxable year by the Internal Revenue Service ("IRS") or any relevant state, local or foreign taxing authority and which are attributable to such Loss or Inclusion.

(c) Right to Contest. Lessor or Head Lessor (in each case, the "Tax Party") shall notify Lessee in writing of any actual or proposed claim, adjustment or other action of any tax authority received by such Tax Party in writing with respect to which Lessee may be required to provide indemnification under this

Section 19.03 ("Proposed Adjustment") (but failure of any Tax Party to so notify Lessee shall not relieve Lessee of its obligations hereunder except to the extent that Lessee is precluded from any contest and actually and materially harmed thereby). If Lessee shall request in writing within thirty (30) days after such Tax Party's notice described above that the Proposed Adjustment be contested (or such shorter period in which the Tax Party may be required to take action), such Tax Party shall contest the Proposed Adjustment; provided, however, that: (i) prior to taking such action, Lessee shall have furnished such Tax Party with an opinion of independent tax advisor chosen by Lessee and reasonably acceptable to such Person, to the effect that such Person has a reasonable possibility of success in contesting the claim; (ii) prior to taking such action, Lessee shall have (A) acknowledged its obligation to indemnify such Tax Party hereunder in the event such Person does not prevail in such contest and (B) agreed to reimburse such Person, promptly on demand, all costs and expenses that such Person may incur in connection with contesting such claim, including without limitation reasonable attorneys' and accountants' fees and expenses; (iii) no Lease Event of Default shall exist and be continuing, (iv) such Person shall not be obligated to contest any proposed amount that is less than \$25,000.00; and (v) such Person shall in all events control the contest, and Lessee shall not have any right to inspect the books and records of such Person, but shall have reasonable opportunity to review and comment on portions of documentation, protests, memoranda or briefs relating exclusively to a Proposed Adjustment. In the event such Tax Party shall pay the tax claimed and then seek a refund, such Person may require Lessee to advance funds sufficient to pay the tax that would be indemnified by Lessee hereunder if the claim were resolved adversely to such Person, in which case, to the extent the refund claim is successful, such funds received from the taxing authority attributable thereto, to the extent not required to be applied to an indemnity payable hereunder, shall be refunded to Lessee. Notwithstanding anything to the contrary in this Section 19.03(c) such Tax Party may at any time decline to take any further action with respect to a Proposed Adjustment or may settle any contest without the consent of Lessee; provided, however, that if Lessee shall have duly complied with all the terms of this Section 19.03(c), and Lessee shall reasonably withhold in writing its consent to all or part of such assessment or settlement based upon its evaluation of the merits, Lessee shall not be obligated to indemnify such Tax Party for the portion of such assessment or settlement to which Lessee has reasonably withheld its consent.

(d) Consolidated Group. In the case of any flow-through entity, "Lessor" shall include the member or other equity owners of Lessor required to report the gross or net income of Lessor and/or other items of income, expense, deduction and credit with respect thereto, and "Lessor," "Head Lessor" and respective owners thereof shall include the consolidated group of which any such Person is a part for income tax purposes.

#### Section 19.04. Withholdings.

Notwithstanding anything herein to the contrary, Lessee agrees that each payment of Rent shall be free and clear of, and without deduction for any withholdings of any nature whatsoever unless required by Applicable Law. If any deduction or withholding is required with respect to a payment of Rent by Lessee, Lessee shall pay an additional amount such that the net amount actually received by the Tax Indemnitee, after deduction or withholding, will be equal on an After-Tax Basis to all such amounts that would be received by the Tax Indemnitee if no such deduction or withholding had been required; provided, that the Lessee shall not be obligated to pay any additional amount pursuant to this Section 19.04 if due to the failure of a Tax Indemnitee to comply with Section 19.02(h) to relief or exemption from such withholding tax on Rent.

Further, notwithstanding anything to the contrary contained, Lessee agrees that each payment under the Debt Documents and under the Head Lease shall be free and clear of, and without deduction for, any withholdings of any nature whatsoever. If any deduction or withholding is required with respect to a payment under the Debt Documents or under the Head Lease, Lessee shall pay an additional amount such that the net amount actually received by the Tax Indemnitee, after deduction or withholding, will be equal on an After-Tax Basis to all such amounts that would be received by the Tax Indemnitee if no such deduction or withholding had been required; provided, that the Lessee shall not be obligated to pay any additional amount pursuant to this Section 19.04 if due to the failure of a Tax Indemnitee to comply with Section 19.02(h) as a precondition to relief or exemption from such withholding tax or deduction.

#### Section 19.05. Survival.

Notwithstanding anything herein to the contrary, the provisions of this Article XIX shall survive the earlier termination of this Lease and the right to collect any other payment that shall have occurred but shall be unpaid by the Lessor hereunder or under any Operative Document shall survive the earlier termination of this Lease and each other Operative Document.

## ARTICLE XX

## LESSEE REPRESENTATIONS AND WARRANTIES

### Section 20.01. Representations and Warranties.

Lessee represents and warrants to Lessor and each Participant that the following are true and correct as of the date hereof:

- (a) **Due Organization.** Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation. Lessee has the corporate power and authority to conduct its business as now conducted, to own or hold under lease its property and to enter into and perform its obligations under the Operative Documents to which it is or is to become a party, and the Lessee further has the authority to lease the Property under this Lease. Lessee is duly qualified to do business and is in good standing as a foreign corporation in the jurisdiction in which the Property is located and Lessee in each other jurisdiction where the failure to so qualify would have a material adverse effect on its ability to perform its obligations under the Operative Documents to which it is a party.
- (b) **Due Authorization: No Conflict.** Each of the Operative Documents to which Lessee is a party has been duly authorized by all necessary corporate action on the part of Lessee and has been duly executed and delivered by Lessee, and the execution, delivery and performance thereof by Lessee will not, (i) require any approval of the stockholders of Lessee or any approval or consent of any trustee or holder of any indebtedness or obligation of Lessee, other than such consents and approvals as have been obtained, (ii) contravene any Applicable Law binding on Lessee or (iii) contravene or result in any breach of or constitute any default under Lessee's charter or by-laws or other organizational documents, or any indenture, judgment, order, mortgage, loan agreement, contract, partnership or joint venture agreement, lease or other agreement or instrument to which Lessee is a party or by which Lessee is bound, or result in the creation of any Lien (other than pursuant to the Operative Documents) upon any of the property of Lessee.
- (c) **Governmental Actions.** All Governmental Action and other consents, approvals, waivers, registrations, authorizations and other action required or necessary pursuant to any legal requirement or contract, indenture, instrument or agreement to which Lessee is a party or its property is bound in connection with the execution, delivery and performance by Lessee of the Operative Documents to which it is a party, has been obtained, given or made.
- (d) **Enforceability.** Each of the Operative Documents to which Lessee is or is to become a party constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, moratorium, fraudulent conveyance, insolvency, equitable principles or other similar laws affecting the enforcement of creditors' rights in general.
- (e) **Investment Company.** Lessee is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.
- (f) **Securities Act.** None of Lessee, any Affiliate thereof or any agent of the foregoing has offered any interest in the Property or the Lease, or any securities of Lessee to, or solicited any offer to acquire any of the same from, any Person, in violation of Section 5 of the Securities Act, nor has it authorized any Person to take any such action, and none of Lessee, any Affiliate thereof or any agent of the foregoing has taken any action that would subject any interest in the Property, the Notes, the Lessor or the Lease to the registration requirements of Section 5 of the Securities Act. Nothing herein is intended to imply or shall be construed to suggest that the interests in Lessor constitute securities.
- (g) **Environmental Matters.** Except as disclosed in the Environmental Reports and further described in Schedule 20.01(g), (i) Lessee has complied and is now complying in all material respects with all Environmental Laws, and no permits under Environmental Laws are required to mortgage, lease or transfer the Property or to operate the Property in the manner in which the Property is currently operated (other than permits that have already been issued and are in full force and effect or for which application has been submitted or will be submitted within 30 days of the Closing Date); (ii) there are no known circumstances that may interfere in any material respect with Lessee's ability to operate and maintain the Property as contemplated by the Operative Documents in compliance with applicable Environmental Laws or that may give rise to any liability under applicable Environmental Laws; (iii) there are no pending or, to the Actual Knowledge of Lessee, threatened Claims against Lessee (with respect to the Property) or the Property itself with respect to Environmental Laws; (iv) during Lessee's occupancy of the Property there have been no known Releases on or from the Property in violation of applicable Environmental Laws and such Property is, to the Actual Knowledge of Lessee, free from all contamination in material violation of Environmental Laws arising from, relative to, or resulting from any Hazardous Materials; (v) to Lessee's knowledge after due inquiry, there are not now any underground storage tanks or incinerators located at, on or under the Property; (vi) to the Actual Knowledge of Lessee there is no asbestos contained in, forming part of or contaminating any part of the Property that could reasonably be expected to result in a material liability under any Environmental Laws; (vii) to the Actual Knowledge of Lessee no polychlorinated biphenyls (PCBs) are used, stored, located at or contaminate any part of the Property that could reasonably be expected to result in a material liability under any Environmental Laws; and (viii) to the Actual Knowledge of Lessee there exists no condition affecting the Property, the improvements, or Lessee that could reasonably be expected to result in a material liability under any Environmental Laws.
- (h) **Bankruptcy.** No bankruptcy, reorganization, arrangement or insolvency proceedings are pending, threatened or contemplated by Lessee or any Affiliate thereof, and neither Lessee nor any Affiliate has made a general assignment for the benefit of creditors.
- (i) **No Lease Event of Default.** No Lease Default or Lease Event of Default exists.

(j) ERISA. No member of the ERISA Group sponsors, maintains, contributes to or is required to contribute to any pension plan subject to Title IV of ERISA and no member of the ERISA Group has at any time in the past sponsored, maintained, contributed to or been required to contribute to any such plan.

(k) Necessary Real Property. Lessee and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interest in, all real property necessary or used in the ordinary conduct of its business except to the extent such failure of title or interest would not have a Material Adverse Effect.

(l) Tax Filings. Each of the Lessee and its Subsidiaries has filed all Federal and other tax returns and reports required to be filed by it having amounts to be reported by it (whether gross, net or otherwise) in excess of \$100,000 and has paid all Federal and other taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets otherwise due and payable in an amount in excess of \$200,000, except those which are being or will be contested in good faith by appropriate proceedings, and no notice of lien has been filed or recorded.

(m) Patents, Trademarks. Each of Lessee and its Subsidiaries owns or is licensed or otherwise has the right to use all patents, trademarks, service marks, trade names, copyrights, franchises, authorizations and other intellectual property rights that are reasonably necessary for the operation of its businesses, without known conflict with rights of any other Person, other than conflicts, either individually or in the aggregate, which could not reasonably be expected have a Material Adverse Effect. Except as specifically disclosed in Schedule 20.01(m), no claim or litigation regarding any of the foregoing is pending, or to the knowledge of Lessee, threatened, which, in either case, could reasonably be expected to have a Material Adverse Effect.

(n) Progeny-Related Representations and Warranties. With respect to the Property:

(i) The Property and the Improvements and the intended use thereof by Lessee and those claiming by, through or under Lessee, comply in all material respects with all Applicable Laws, including without limitation restrictive covenants, conditions, zoning ordinances, subdivision and building codes, flood disaster laws, applicable Environmental Laws and all other ordinances, orders or legal requirements issued by any state, federal or municipal authorities having jurisdiction over the Property. The Property is not part of a tax parcel covering any real estate other than the Property. The Property and the Improvements do not require (or have necessary easements or appurtenant rights) any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements.

(ii) All utility services necessary and sufficient for the use, occupancy, and operation of the Property for its intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas or propane (if applicable), electric and telephone facilities, through public rights-of-way or perpetual private easements.

(iii) All streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, and operation of the Property for its current use and purposes have been completed, have been dedicated to and accepted by the appropriate municipal authority (if applicable) and are open and available to the Property and the Improvements without further condition or cost to Lessor.

(iv) All curb cuts, driveways and traffic signals located on the Property and shown on the survey delivered to Lessor prior to the execution and delivery of this Lease and material to the use and value of the Property for its intended purposes are existing and have been fully approved by the appropriate Governmental Authority.

(v) The Improvements and Fixtures are structurally sound, and the Improvements, the Fixtures and the Equipment are in good repair and free of material defects in materials and workmanship and have been constructed and installed in substantial compliance with the plans and specifications relating thereto. All major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition.

(vi) There are no security agreements or financing statements affecting the Property other than Permitted Liens.

(vii) No part of the Property has been taken in Condemnation, eminent domain or like proceeding nor is any such proceeding pending or, to Lessee's Actual Knowledge and belief, threatened in writing or contemplated.

(viii) There are no other leases, subleases or licenses (other than the Lease and Permitted Encumbrances) in existence in connection with the Property.

(ix) There is a valid permanent Certificate of Occupancy or its equivalent, in each case issued and outstanding for all Improvements.

(x) The Permitted Encumbrances, individually and in the aggregate, do not materially adversely affect the use of the Property or materially interfere with the current use or operation of the Property.

(xi) There are no unpaid charges, debts, liabilities, claims or obligations arising from or in connection with the construction, development, occupancy, ownership, use or operation of the Property which could give rise to a construction, mechanic's or materialmen's lien or other statutory lien against all or a portion of the Property, except as relate to work to be paid, and which will be paid, prior to becoming delinquent,

by Lessee in the ordinary course of business.

(xii) There are no material suits, actions, writs, decrees, injunctions, orders, judgments, claims or proceedings pending or, to the Actual Knowledge of Lessee, threatened or contemplated, against, arising out of, or relating to the Property.

(xiii) To the Actual Knowledge of Lessee, all information, books, records and other documents regarding the Property and the Lessee heretofore delivered to Lessor by Lessee or its agents, when taken as a whole, are true and correct in all material respects, fairly present the information contained in such documents as of the date thereof and did not omit to state a material fact required to be stated therein or necessary to make the statements therein not materially misleading.

(xiv) Other than Werner Enterprises ("Oral Licensee"), which is Lessee's primary carrier and which uses the portion of the Property known as shop maintenance, to the Actual Knowledge of Lessee, there are no adverse or other parties in possession of the Property. Lessee shall deliver a subordination letter on the Closing Date pursuant to which the Oral Licensee acknowledges and agrees that its interest in the Property is terminable at will and without advance notice and is subject and subordinate to the interests of all Persons arising under the Operative Documents.

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

(o) Insurance. The properties of Lessee and its Subsidiaries are insured with financial sound and reputable insurance companies, in such amounts and with such deductibles covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where Lessee or such Subsidiaries operate (after giving effect to self-insurance permitted hereunder).

(p) Financial Statements. The most recent audited financial statements of Lessee and its consolidated Subsidiaries (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) are complete and accurate and fairly present the financial condition of Lessee and its consolidated Subsidiaries as of the dates thereof and results of operations for the periods covered thereby; and since January 28, 2000 there have been no changes in the business, operations, property or financial or other condition of Lessee and its Subsidiaries on a consolidated basis that could reasonably be expected to have a Material Adverse Effect.

(q) Location of Office. The principal place of business, chief executive office and office of the Lessee where the documents, accounts and records relating to the transactions contemplated by this Agreement and each other Operative Document are kept are located at 100 Mission Ridge, Goodlettsville, TN 37072, and the state of organization of Lessee is Tennessee.

(r) No Litigation. Except as disclosed in Schedule 20.01(r), there is no litigation against any Lessee or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect.

#### Section 20.02. Defense of Title.

If, while the Debt Documents and the Head Lease are in force, the title to the Mortgaged Property, the Equipment or the interest of the Holders, Agent or Head Lessor shall be the subject of any action at law or in equity, or be attacked, or endangered, clouded or adversely affected in any material manner, Lessee, at Lessee's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel selected by Lessee and approved by the Agent (and/or the Head Lessor as provided in the Intercreditor Agreement), the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest; provided, however, that Lessee shall not be required to defend such title or interest to the extent the claim against such title or interest was caused by any act or acts of the Holders, Agent, Servicer, the Head Lessor or Lessor. Notwithstanding the foregoing, in the event that the Agent (and/or the Head Lessor to the extent related to the Equipment), acting in good faith, determines that Lessee is not adequately performing its obligations under this Section 20.02, the Agent (and/or the Head Lessor to the extent related to the Equipment) may, without limiting or waiving any other rights or remedies, after giving five (5) Business Days' notice to Lessor and Lessee, take such steps with respect thereto as the Agent (and/or the Head Lessor to the extent related to the Equipment) shall deem necessary or proper and any reasonable out-of-pocket costs and expenses incurred by the Agent (and/or the Head Lessor to the extent related to the Equipment) in connection therewith, together with interest thereon at the Default Rate from the date incurred by the Agent (and/or the Head Lessor as provided in the Intercreditor Agreement) until actually paid by Lessee, shall be immediately paid by Lessee on demand and shall be an obligation under this Lease.

Notwithstanding anything herein to the contrary, no Person shall be entitled to take action that shall be binding on the Lessor, in the case of its interest in the Real Property without the consent of the Holders, and in the case of the Equipment without the consent of the Head Lessor. Each of the Persons referred to above agree to cooperate with the Lessee at its cost, expense and risk in the prosecution or defense of a Claim under applicable title insurance.

#### Section 20.03. Certain Covenants of Lessee.

Lessee hereby covenants and agrees with each Participant, that, from and after the date of this Lease until the Lessee Obligations are paid in full:

(a) Financial and Other Information. Lessee shall deliver to each Participant the following financial and other information:

(i) Quarterly Statements -- within 45 days after the end of each quarterly fiscal period in each fiscal year of Lessee (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of

(A) a consolidated balance sheet of Lessee as at the end of such quarter, and

(B) consolidated statements of income, changes in shareholders' equity (to the extent prepared) and cash flows of Lessee, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by an Authorized Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, provided that delivery within the time period specified above of copies of Lessee's Quarterly Report on Form 10-Q, if any, prepared in compliance with the requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 20.03;

(ii) Annual Statements -- within 90 days after the end of each fiscal year of Lessee, duplicate copies of.

(A) a consolidated balance sheet of Lessee and its subsidiaries, if any, as at the end of such year, and

(B) consolidated statements of income, changes in shareholders' equity and cash flows of Lessee and its subsidiaries, if any, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, provided that the delivery within the time period specified above of Lessee's Annual Report on Form 10-K for such fiscal year (together with Lessee's annual report to shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements therefor and filed with the Securities and Exchange Commission, if any, shall be deemed to satisfy the requirements of this Section 20.03(b).

(b) Consolidation, Merger, Sale, etc. Lessee shall not consolidate with any Person, merge into any Person, or convey, transfer, lease or otherwise dispose of to any Person all or substantially all of its assets in any single transaction (or series of related transactions), unless:

(i) in each case, such Person (the "Surviving Corporation") shall be a corporation or organization organized under the laws of the United States of America, a state or commonwealth thereof or the District of Columbia and shall have assumed in writing each obligation, and succeeded to each right, of Lessee under the Operative Documents to which Lessee is a party;

(ii) no Lease Default or Lease Event of Default shall exist prior to or after giving effect to such transaction;

(iii) the Surviving Corporation shall have delivered to each of the Participants (including the Agent) an Officers' Certificate stating that such transaction complies with the terms and conditions of this Section 20.03(b) and that all Governmental Action, if any, required prior to the consummation of such transaction in connection with such transaction have been obtained unless the failure to obtain such Governmental Action would not have a Material Adverse Effect on the ability of the Surviving Corporation to perform its obligations under the Operative Documents; and the Surviving Corporation shall represent and warrant to each of the Participants and shall have caused to be delivered to each of the Participants an opinion of counsel, in form and substance reasonably satisfactory to each of the Participants, that (x) the Surviving Corporation is a corporation in good standing in the state of its incorporation; (y) all documents executed and delivered by Surviving Corporation pursuant to this Section 20.03(b) have been duly authorized, executed and delivered by the Surviving Corporation and constitute the valid, legal and binding obligations of Surviving Corporation; and (z) all of the Operative Documents to which Lessee is a party will, upon the consummation of such transaction, be the valid, legal and binding obligations of Surviving Corporation, subject in each case to customary exceptions for creditors' rights as well as such other customary exceptions as were contained in the legal opinions delivered concurrently with the execution and delivery of the Lease and the other Operative Documents being executed and delivered as of the date hereof;

(iv) Upon the consummation of such transaction, the Surviving Corporation, if other than Lessee, shall succeed to, and be substituted for, and may exercise every right and power of, Lessee immediately prior to such transaction under each Operative Document to which Lessee was a party immediately prior to such transaction, with the same effect as if the Surviving Corporation had been named herein and therein.

(v) After giving full effect to the transaction, the Surviving Corporation shall have a Lessee's Adjusted Net Worth at least equal to the Lessee's Adjusted Net Worth prior to the consummation of such transaction and a senior long-term unsecured debt rating by the Rating Agencies at least equal to the following:

(A) if Lessee's senior long-term unsecured debt rating prior to such transaction is higher than or equal to A- by Standard & Poor's, or the equivalent by Moody's, then the Surviving Corporation's post-merger senior long-term unsecured debt rating must be equal to or higher than BBB+ by Standard & Poor's or the equivalent by Moody's;

(B) if Lessee's senior long-term unsecured debt rating prior to the merger is equal to or less than BBB+ by Standard & Poor's or the equivalent by Moody's, then the Surviving Corporation's post-merger senior long-term unsecured debt rating must be no less than the next lower level than the pre-merger rating, but in no event lower than BBB- by Standard & Poor's or the equivalent by Moody's, provided, however, if the Lessee's senior long-term unsecured debt rating prior to the merger is below Investment Grade, then the Surviving Corporation's post-merger long-term unsecured debt rating shall be no lower than the Lessee's senior long-term unsecured debt rating prior to the merger; and

(C) if Lessee is unrated prior to the merger, then the Surviving Corporation shall have an Adjusted Net Worth equal to the pre-merger Adjusted Net Worth of Lessee.

## ARTICLE XXI

[INTENTIONALLY OMITTED]

## ARTICLE XXII

### LESSOR REPRESENTATIONS, WARRANTIES AND COVENANTS

#### Section 22.01. Representations and Warranties

The Lessor represents and warrants to Lessee and each Participant that the following are true and correct as of the date hereof:

(a) **Due Organization.** Lessor is a Delaware limited liability company and is duly organized and validly existing and in good standing under the laws of the State of Delaware and the jurisdiction in which the Property is located and has the power and authority to enter into and perform its obligations under each of the Operative Documents to which it is a party.

(b) **Due Authorization; No Conflict.** Each of the Operative Documents to which Lessor is a party has been duly authorized by all necessary action on the part of Lessor and has been duly executed and delivered by Lessor and the execution, delivery and performance thereof by Lessor will not (i) require any approval of the membership of Lessor, other than approvals as have been obtained, (ii) contravene any Applicable Law binding on Lessor or (iii) contravene or result in a breach of or constitute a default under Lessor's organizational documents or operating agreement, or any indenture, judgment, order, mortgage, Note Purchase Agreement, contract, lease or other agreement or instrument to which Lessor is a party or by which Lessor is bound, or result in the creation of any Lien (other than pursuant to the Operative Documents) upon any of the property of Lessor.

(c) **Governmental Actions.** All Governmental Actions and other consents, approvals, waivers, registrations, authorizations and other action required or necessary or prudent pursuant to any legal requirement or contract, indenture, instrument or agreement to which Lessor is a party or its property is bound in connection with the execution, delivery and performance by Lessor of the Operative Documents to which it is a party, has been obtained, given or made.

(d) **Enforceability.** Each of the Operative Documents to which Lessor is or is to become a party constitutes the legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, moratorium, fraudulent conveyance, insolvency, equitable principles or similar laws affecting the enforcement of creditors' rights in general.

(e) **Investment Company.** Lessor is not an "investment company" or a company "controlled by" an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(f) **No Litigation.** There is no action or proceeding pending or, to Lessor's knowledge, threatened, to which it is or will be a party.

(g) **Use of Proceeds.** Except as expressly contemplated by the Operative Documents, the proceeds of the Loans from the Holders shall not be used by Lessor for any purpose other than to finance the acquisition of the Lessor's purchase of the Property (excluding the Equipment), and fees, expenses and other disbursements related thereto and the transactions contemplated by the Operative Documents.

(h) **Securities Matters.** Neither Lessor, nor any Person authorized by Lessor to act on its behalf has offered or sold any membership in Lessor, the Notes or in any other security, the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the aforementioned securities to, or solicited any offer to acquire any of the same from, any Person, other than in the case of the membership interests of Lessor, First Union Development Corporation, and in the case of the Notes, the Agent and the Holders; and neither Lessor nor any Person authorized by Lessor to act on its behalf will take action that would subject, as a direct result of such action alone, the issuance or sale of any of the aforementioned securities to the provisions of Section 5 of the Securities Act.

(i) **Principal Place of Business.** Lessor's principal place of business, chief executive office and the office where the documents, accounts and

records relating to the transactions contemplated by this Lease and each other Operative Document are kept are located at One First Union Center, TW-6, Charlotte, NC 28288-0166, Attn: Abizar Rangwala, Vice President, facsimile number (704) 383-8108, with a copy to: Timothy Danello, Senior Vice President and Assistant General Counsel, First Union Corporation, 301 South College Street, NC0630, Charlotte, NC 28288-0630, facsimile number (704) 383-0649.

(j) Lessor Liens. The Property is free and clear of all Lessor Liens other than any Lessor Liens contemplated by the Operative Documents.

(k) Single Purpose Entity. Lessor is a Single Purpose Entity.

#### Section 22.02. Lessor Covenants.

(a) No Amendment. Without the consent of Lessee, Agent and Head Lessor, Lessor shall not cause or permit an amendment to the articles of organization or operating agreement of Lessor, except for amendments of a purely ministerial or administrative nature.

(b) Transfer. Except as provided below, without the consent of the Lessee, Agent and Head Lessor, Lessor shall restrict each member of Lessor from transferring all or any portion of its right, title and interest in and to the Lessor unless:

(i) such transferee is a United States person within the meaning of Section 7701(a)(30) of the Code or otherwise is exempt from U.S. federal income tax withholding requirements as of the date of transfer;

(ii) no transferee shall be or shall have been in a lawsuit or other adversarial proceeding against Lessor, Agent, any Holder or any Affiliate of the foregoing within the immediately preceding ten (10) year period prior to the transfer;

(iii) such transferee shall execute a joinder, assumption agreement or the operating agreement of Lessor pursuant to which it agrees to undertake all covenants and obligations of the transferor arising after the date of such transfer, including without limitation those obligations arising under the Indemnity Agreement, and agrees to be bound by the restrictions on transfers set forth in this Section 22.02;

(iv) such transfer will not contravene or violate any Applicable Law, including the Securities Act;

(v) the transferor shall have given at least ten (10) days' prior notice to Lessee, Agent and Head Lessor of such transfer; and

(vi) at the date of any transfer, the transferor shall certify to each of Lessee, Agent and Head Lessor that the conditions to the proposed transfer prescribed by this Section 22.02 to be met by the transferor or the transferee respectively, have been satisfied.

(c) Tax Matters. Lessor covenants that its status shall not result in a Loss or Income Inclusion to Head Lessor, and Lessor shall not take any action that would result in the inaccuracy of any representations and warranties contained in Section 19.03(b) if such representations and warranties were deemed to have been made by it.

### **ARTICLE XXIII**

#### **SUBSTITUTION OF PROPERTIES**

##### Section 23.01. Criteria for a Substitute Property.

Subject to the following conditions, Lessee shall have the right as described in Section 12.01(c) to offer to Lessor to substitute under this Lease the Property after a Casualty. In any such instance in which Lessor has accepted such offer, Lessee may withdraw from this Lease the Property (for purposes of this Article, a "Withdrawn Property"), and substitute therefor a Substitute Property, such right on the part of Lessee shall be subject to Section 21.02 and the following:

(a) the Fair Market Sales Value and Fair Market Rental Value of the Substitute Property (taking into account individually in such determination the separate property that will comprise the Equipment, which must have a Fair Market Sales Value, Fair Market Rental Value, utility and remaining useful life as the portion of the Equipment constituting a portion of the Withdrawn Property) (assuming compliance with the Lease) must be at least equal to the Fair Market Sales Value and Fair Market Rental Value of the Withdrawn Property as of the date immediately preceding the date of Casualty or Condemnation (assuming compliance with the Lease and assuming that it is unencumbered by this Lease), which Fair Market Sales Values and Fair Market Rental Values shall be as determined by the Appraisal Procedure;

(b) the Fair Market Sales Value (Dark) of the Substitute Property must be at least equal to the Fair Market Sales Value (Dark) of the Withdrawn Property as of the scheduled maturity date of the Notes, which Fair Market Sales Value (Dark) shall be as determined by the Appraisal Procedure;

(c) the remaining useful life of the Substitute Property shall be at least equivalent to the remaining "useful life" of the Withdrawn Property (which shall be separately determined with respect to any Head Lessor Property), as determined by the Appraisal Procedure (and calculated



prior to the Event of Loss and assuming compliance with this Lease);

(d) to the extent not considered by the Appraisal Procedure, the Substitute Property and each component thereof shall be free of any liabilities, title defects, and other conditions that would adversely affect such Substitute Property's fair market value;

(e) notwithstanding anything to the contrary contained herein, in no event shall Lessee have the right to offer to substitute a Substitute Property for the Property if a Lease Event of Default exists or a Lease Default shall have occurred and be continuing or giving effect to the substitution will occur or if such substitution would adversely affect any rights of any parties having an interest in the residual value insurance policy issued by FSL Group in connection with the closing of the Overall Transaction;

(f) the transaction shall constitute a tax-free exchange under Section 1031 of the Code which will result in no adverse tax consequence to any Indemnitee (in each case as determined by such Indemnitee) and further shall not result in any adverse accounting treatment to any Indemnitee (in each case as determined by such Indemnitee);

(g) the exercise of ownership rights with respect to the Substitute Property by Lessor (and with respect to the Equipment constituting a portion of such Substitute Property ownership rights of Head Lessor) and the ability of Agent, Lessor and Head Lessor to exercise rights and remedies under the Operative Documents in the jurisdiction in which the Substitute Property is located shall in all respects be similar, or no less favorable, than such ability to exercise rights and remedies in the jurisdiction in which the Withdrawn Property is located;

(h) such Substitute Property is located in the continental United States and is acceptable to the Lessor, and on the date on which the substitution is effected the Substitute Property is in a condition that complies with all applicable requirements of this Lease and the Debt Documents with respect to the Substituted Property;

(i) the transactions contemplated in connection with the substitution of the Withdrawn Property for the Substitute Property shall not expose any Indemnitee to a risk of any Claim materially different or in excess of the risk of exposure to any such Claim with respect to the Withdrawn Property, and in no event shall expose any Indemnitee to any unindemnified Claim; and

(j) prior to the proposed substitution Lessee shall execute and deliver to FSL Group and Agent (i) a copy of the "Phase I", environmental assessment report described in ss. 23.02(b) hereto, (ii) a copy of a final as-built survey described in ss. 23.02(e) hereto, and (iii) a copy of a title commitment issued by the relevant title insurance company, each of which shall be acceptable to FSL Group and Agent and each naming FSL Group and Agent as a party entitled to rely thereon.

#### Section 23.02. Lessee and Lessor Deliveries.

In connection with any substitution of the Property, Lessee shall execute (where appropriate) and deliver to Lessor for Lessor's review and approval in Lessor's reasonable direction:

(a) title insurance policies insuring Lessor's and the Agent's interest in the Substitute Property and the Mortgage Lien on such Substitute Property with no exceptions other than Permitted Liens (provided that all Permitted Encumbrances shall be acceptable to Agent and Head Lessor), title insurance exceptions comparable to those permitted with respect to the Properties as of the Closing Date and other exceptions satisfactory to Agent, Lessor and Head Lessor;

(b) a "Phase I" Environmental Site Assessment report in form substantially similar to the form of such report delivered to Lessor on or before the Closing Date in respect of the Properties and in substance satisfactory to Lessor;

(c) a report by an engineering firm or consultant describing the condition of the Substitute Property, satisfactory in form and substance to Lessor;

(d) an amendment to this Lease and any memorandum hereof duly executed and acknowledged in form and substance satisfactory to Lessor and Lessee to replace the description of the Withdrawn Property with the description of the Substitute Property and to correct Exhibit B and such other amendments as may be required to the other Operative Documents or otherwise reasonably requested by any Participant;

(e) a copy of a final as-built survey of the Substitute Property, dated as of recent date, satisfactory in form and substance to Lessor and meeting the survey requirements employed in connection with Lessor's acquisition of the Withdrawn Property;

(f) certificates of insurance, if any, required with respect to the Substitute Property pursuant to the terms of this Lease;

(g) one or more appraisals by a Qualified Appraiser of the Substitute Property acceptable to Lessor and Agent and containing such opinions and covering such matters similar to those delivered in appraisals delivered on the Closing Date as Lessor and Agent may request;

(h) a deed conveying fee title to the Substitute Property executed and delivered in favor of Lessor and in substance (with respect to warranties, if any) substantially similar to the deeds delivered to Lessor on the Closing Date with respect to the Withdrawn Property;

(i) a bill of sale with respect to the portion of the Substitute Property constituting Equipment executed and delivered in favor of Head Lessor and in substance (with respect to warranties, if any) substantially similar to the Bill of Sale delivered to Head Lessor on the Closing Date with respect to the portion of the Withdrawn Property constituting Equipment;

(j) a legal opinion relating to the due authorization, execution and delivery of the amendment to the Lease, deed, bills of sale and other documents required to be delivered in connection herewith, respectively, in each case substantially similar to the opinions of counsel delivered to Lessor, Agent, Head Lessor and other parties on the Closing Date;

(k) a deed with covenants against grantor's acts and other affidavits, documents and certificates appropriate to convey the Withdrawn Property on an "as-is" basis in favor of Lessee or its designee;

(l) a satisfaction of mortgage, a release of lien, UCC termination statements and other documents appropriate to release the Withdrawn Property from the liens created by the Debt Documents, in each case in form and substance satisfactory to the Agent in its reasonable discretion;

(m) a bill of sale and UCC termination statements sufficient to transfer to Lessee or its designee the Equipment free and clear of Lessor Liens arising through the Head Lessor in form and substance satisfactory to the relevant Participants, such conveyance to be on an "as-is" basis;

(n) a certificate of Lessee stating that all representations and warranties in Section 20.01 of this Lease are true and correct in all material respects as of the date of substitution with respect to the Substitute Property;

(o) the filing of Debt Documents in form and substance similar to the original Debt Documents, except to the extent required to meet local custom and Applicable Laws in the jurisdiction in which such Substitute Property is located;

(p) the filing of UCC financing statements against such parties and in such jurisdictions as may be required by Agent and relevant Participants; and

(q) satisfaction of any other conditions precedent required to be satisfied in connection with the original acquisition of the Withdrawn Property and satisfaction of such other conditions precedent, including the delivery of such other documents, agreements, certificates, reports and opinions and the providers thereof, as may be reasonably required by the relevant Participants.

All of the foregoing (including the providers thereof) shall also be submitted to and be subject to the reasonable approval of the Lessor and other relevant Participants. All reports and other information required under Section 23.02 shall name the Lessor and its assigns as parties entitled to rely thereon.

The Lessor and other relevant Participants shall have forty-five (45) days in which to consent to the foregoing deliveries. The failure of Lessor to respond within such 45-day period shall be deemed rejection. The closing for the transfer of the Withdrawn Property and the acquisition of the Substitute Property shall occur at a time which is mutually acceptable to Lessee and the relevant Participants. Upon Lessee's satisfaction of Sections 23.01 and 23.02, Lessor shall, within two (2) Business Days after its approval of any instrument delivered in accordance with the above provisions of this Article XXIII for execution and delivery, by Lessor, execute and deliver such instrument to Lessee. If Lessor shall object (or be deemed to object) to any proposed Substitute Property then Lessee may submit an alternative proposed Substitute Property, and, in that event, the period within which Lessee must effect a substitution hereunder shall be extended for an additional forty-five (45) days; Lessee may in good faith submit successive alternative proposed Substitute Properties and shall be entitled to extensions of the period within which substitutions must be effected in accordance with the above provisions of this Section.

In connection with any Withdrawn Property and Substitute Property (or proposed Substitute Property) Lessee shall pay on demand to (i) such Participant an amount equal to the reasonable expenses of such Participant, including reasonable attorneys' fees and expenses incurred in connection with such Withdrawn Property or Substitute Property, and a reasonable underwriting fee to the Holders and (ii) FSL Group an amount equal to the reasonable expenses of FSL Group, including reasonable attorneys' fees, internal and external underwriting costs, and any other costs related to the preparation and issuance of an endorsement to any insurance policy provided to Lessee by FSL Group.

Notwithstanding anything herein to the contrary, Lessee shall indemnify each Indemnitee in connection with the transactions contemplated by this Article XXIII, whether or not any such transactions are consummated.

## **ARTICLE XXIV**

### **PURCHASE PROCEDURE**

Section 24.01. Purchase Procedure.

In the event of the purchase of Lessor's interest in the Property by Lessee pursuant to any provision of this Lease, the terms and conditions of this

Section 24.01 shall apply.

(a) On the Closing Date fixed for the purchase of Lessee's interest in the Property:

(i) Lessee shall pay to Lessor, in lawful money of the United States, at Lessor's address hereinabove stated or at any other place in the United States which Lessor may designate (or, if assigned, to Lessor's assignee and to such account and in such manner as provided by such assignee), the applicable purchase price;

(ii) Lessor shall execute and deliver to Lessee a deed with covenants against grantor's acts, assignment and/or such other instrument or instruments as may be appropriate, which shall transfer Lessor's interest in the Property, subject to, (A) Permitted Liens, (B) Lessor Liens attributable to Lessor attaching to the Property after the Closing Date which shall not have been created or caused by Lessor (unless consented to by Lessee), (C) all Applicable Laws, and, (D) if such purchase is pursuant to Article XII or in other circumstances where the obligations under the Loan Documents are required to be fully paid, free of the liens created by the Debt Documents; and

(iii) If the Equipment is being acquired as a part of such transaction, Head Lessor shall execute and deliver to Lessee a bill of sale transferring the Equipment to Lessee free and clear of Lessor Lien's attributable to Head Lessor attaching to the Equipment after the Closing Date (which shall not have been created or caused by Lessor unless consented to by Lessee), and such transfer shall be "as-is," "where-is" and in then-present physical condition.

(iv) Upon receipt by Lessor, Agent, each Holder and Head Lessor of all amounts due such Persons under any Operative Documents, each such Person shall execute and deliver such other instruments of conveyance, releases, UCC termination statements, affidavits and other documents and agreements as may be reasonably required to consummate the conveyance of the Property, all in form and substance as is reasonably acceptable to the Person required to execute and deliver the same.

(b) Lessee shall pay all reasonable costs, charges and expenses incident to such transfer, including, without limitation, all survey costs, title report costs, recording fees, transfer taxes, title insurance premiums and federal, state and local taxes if applicable but excluding net income taxes (except to the extent relevant in measuring damages in the case of a Lease Event of Default).

## **ARTICLE XXV**

### **TRANSFER OF LESSOR'S INTEREST**

#### Section 25.01. Permitted Transfer.

Subject to Article IV, Lessor may transfer all, but not less than all, of its right, title and interest in and to the Property (including its leasehold interest in the Equipment) and its rights under this Lease and the other documents relating thereto with respect to such Property, on the following terms and conditions, each of which shall be satisfied prior to the effective date of the transfer (other than a transfer by a deed-in-lieu of foreclosure or similar transfer made in connection with an exercise of remedies under the Debt Documents):

(a) with respect to a transfer of the Property, the Lease or any interest therein, the transferee must be a Person that shall be able to represent that it is a Single Purpose Entity, which shall be true (and the transferee shall make such representations and warranties to Lessee immediately prior to the effectiveness of the closing of such transfer);

(b) such transfer shall be in compliance with the terms of the Note Purchase Agreement and with Applicable Laws, shall comply with and not violate any provisions of the Head Lease and shall not create a relationship which would violate Applicable Laws;

(c) such transferee shall execute a joinder or assumption agreement pursuant to which it agrees to undertake all the covenants and obligations of Lessor under the Operative Documents arising after the date of transfer, such joinder or assumption agreement to be in form and substance reasonably satisfactory to Lessee and other relevant Participants, and such transferee and the equity owners thereof shall execute an indemnity agreement in form and substance similar to the Indemnity Agreement;

(d) such transferee is a "United States person" within the meaning of Section 7701(a)(30) of the Code or otherwise is exempt from U.S. federal income withholding requirements as of the date of the transfer. Neither the transferee nor any member or equity owner thereof or any Affiliate shall be or shall have been in a lawsuit or other adversarial proceeding against Lessee or any Affiliate within the immediately preceding ten (10) years prior to the date of the transfer;

(e) such transfer will not contravene or violate any Applicable Law, including the Securities Act;

(f) the transferor shall have given at least sixty (60) days' prior notice to Lessee, Agent and Head Lessor of such transfer, which notice shall contain such information and evidence as shall be reasonably necessary to establish compliance with this Article XXV and the name and address of the transferee for notices;

(g) the transferor and the transferee shall each have delivered to Lessee, Agent, FSL Group (if required) and Head Lessor an Officer's Certificate to the effect that the conditions to the proposed transfer prescribed by this Article XXV to be met by the transferor or the transferee, respectively, have been satisfied;

(h) the transferor and the transferee shall pay all expenses in connection with such transfer, including reasonable attorneys' fees and expenses;

(i) to the extent required under the documents evidencing the residual guaranty provided by FSL Group on behalf of the Holders, the consent of FSL Group shall have been provided; and

(j) the Lessee shall have ratified and reaffirmed its obligations hereunder in a form substantially similar to that in Exhibit D attached hereto.

Notwithstanding anything herein to the contrary, the obligations set forth above shall not apply to any sale or other transfer of the Property or any portion thereof otherwise permitted pursuant to the terms of this Lease and shall not apply in connection with the exercise of remedies after the occurrence of an Event of Default.

#### Section 25.02. Effects of Transfers.

From and after any transfer effected in accordance with this Article XXV, the transferor shall be released, to the extent of the interest transferred and the obligations assumed by the transferee, from its liability arising after the date of such transfer hereunder and under the other documents to which it is a party relating to the interests being transferred. Such release shall be in respect of obligations (that are assumed by the transferee) arising on or after the date of such transfer. Upon any transfer by Lessor as above provided, any such transferee shall be deemed the "Lessor" for all purposes of such documents and each reference herein to Lessor shall thereafter be deemed a reference to such transferee for all purposes, except as provided in the preceding sentence. Lessee agrees to execute any and all documents reasonably appropriate to effectuate the contemplated transfer by Lessor, including, without limitation, an amendment to this Lease providing that the new Lessor shall be Lessor and the existing Lessor shall be released from its liabilities arising after the date of such transfer.

## ARTICLE XXVI

### PERMITTED FINANCING

#### Section 26.01. Financing During Term.

Lessee hereby expressly consents to the Lien imposed in favor of the Indebtedness pursuant to the Debt Documents and such Indebtedness as in effect on the date hereof. In connection with any refinancing of the initial Indebtedness during the Base Term and during any Renewal Term, Lessor shall be free to encumber the Property to the extent not violative of any other Operative Document; provided, that under no circumstances shall there be any second mortgage or subordinated financing nor shall any such refinancing adversely affect the rights and privileges of Lessee under this Lease in any respect, or increase the nature, scope or amount of any obligations of Lessee in excess of those existing prior to any such refinancing or increase the nature, scope or amount of any payment obligations of Lessee in excess of those existing prior to any such refinancing; provided, further, Lessee acknowledges that an increase in the principal amount over the principal outstanding on the Indebtedness, an increase in the interest rate over the interest rate applicable to the Notes, the imposition of additional covenants on the Lessor over covenants in the Debt Documents, additional or different provisions relating to events of default, remedies, late charges, default rate interests, intercreditor matters and other covenants and provisions that do not alter the terms and conditions of this Lease shall not be deemed to violate the foregoing proviso. In connection with any refinancing, Lessee shall not be obligated for any make-whole premium or similar amount in excess of its obligations related to Make-Whole Premium as if no refinancing occurred. Further, any such refinancing shall not adversely affect the rights and privileges of Head Lessor under the Head Lease or any Operative Document without the consent of the Head Lessor. Any refinancing shall be subject to the implementation of an intercreditor arrangement in form and substance acceptable to the relevant Participants and evidenced by documentation acceptable to each relevant Participant and the new lenders. Lessee and its Affiliates will have no obligation to amend this Lease or any other Operative Documents to facilitate such refinancing (except to amend the definitions of "Debt Documents," "Holders," "Indebtedness," "Mortgage," "Note," "Agent," etc. to mean the replacement documents, the new lender, the new indebtedness and the references to the sections therein and to make any other amendments required by the relevant parties that do not violate the provisions of this Section 26.01); but shall execute and deliver a subordination and attornment agreement to any lender to Lessor permitted by the above terms of this Section 26.01 if such lender(s) shall in turn deliver a nondisturbance agreement to Lessee, in each case with terms substantially similar to the SNDA. Lessee agrees to reasonably cooperate with any refinancing by Lessor permitted hereunder. Such cooperation shall include, without limitation, (i) naming such new lender(s) as Additional Insured(s); and (ii) subject to such lenders entering into an intercreditor agreement in form and substance acceptable to the relevant Participants, making payments of Base Rent and/or Supplemental Rent to or at the direction of such lender(s).

Notwithstanding anything herein to the contrary, Lessee acknowledges that the maturity of the financing under the Debt Documents is twenty-two (22) years from the commencement of the Base Term. In the event that the Lessee has elected any Renewal Term, it shall be necessary for the Lessor to arrange a refinancing in order to preserve its equity or residual interest in the Property. To facilitate such required refinancing, Lessee, at the cost and expense of Lessor, shall cooperate with Lessor in order to consummate a refinancing of the Indebtedness. In that regard, the Lessee shall not take any discretionary action that would interfere or adversely affect in any material respect the ability of the Lessor to refinance such Indebtedness, provided that a nondisturbance agreement in form and substance substantially similar to the SNDA will be executed and delivered by the replacement agent and holders.

#### Section 26.02. Counterparts, Memorandum.

This Lease may be simultaneously executed in multiple counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes. Lessee and Lessor agree that a memorandum of this Lease (and any amendment hereof) shall be executed and recorded, at Lessee's expense, in the land records of the jurisdiction in which the Property is situate.

## ARTICLE XXVII

### MISCELLANEOUS

#### Section 27.01. Binding Effect: Successors and Assigns Survival.

The terms and provisions of this Lease, and the respective rights and obligations hereunder of Lessor and Lessee, shall be binding upon their respective successors, legal representatives and assigns (including, in the case of Lessor, any Person to whom Lessor may transfer the Property) and inure to the benefit of their respective permitted successors and assigns, and the rights hereunder of the Agent shall inure (subject to such conditions as are contained herein) to the benefit of its permitted successors and assigns. Each Participant and other Person referred to herein as an Indemnitee are intended to be, and shall be third party beneficiaries under this Lease. Without limiting the foregoing, each such Person shall be entitled to enforce provisions under Article XIX to the extent any Claim is made against it.

#### Section 27.02. Quiet Enjoyment.

Lessor covenants that, so long as Lessee shall faithfully perform the agreements, terms and conditions of this Lease, Lessee shall and may peaceably and quietly have, hold and enjoy the Property for the Lease Term hereby granted without molestation or disturbance by or from Lessor, free of any encumbrance or lien granted by Lessor except for Permitted Liens and Permitted Encumbrances.

#### Section 27.03. Notices.

Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be in writing sent to either (i) that Person's Address, and a copy thereof shall be sent to each Person to receive a copy pursuant to the definition of "Address," by a nationally recognized overnight courier service, and any such notice shall be deemed received one (1) Business Day after delivery to a nationally recognized courier service specifying overnight delivery, or (ii) that Person's fax number, and a second copy thereof shall be sent to each Person required to receive a copy pursuant to the definition of "Address," by a nationally recognized overnight courier service, specifying overnight delivery, prepaid, and any such notice shall be deemed received after the earlier of (x) the confirmation of receipt of such fax, or (y) one (1) Business Day after delivered to such courier. From time to time any party may designate a new Address or fax number for purposes of notice hereunder by giving fifteen (15) days' written notice thereof to each of the other parties hereto. All notices given hereunder shall be irrevocable unless expressly specified otherwise.

#### Section 27.04. Severability.

Any provision of this Lease that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction, and each party hereto shall remain liable to perform its obligations hereunder except to the extent of such unenforceability. To the extent permitted by Applicable Law, Lessee hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

#### Section 27.05. Amendments, Complete Agreements.

Neither this Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but may be terminated, amended, supplemented, waived or modified only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought and by the Agent and Head Lessor (provided that the consent of the Agent shall not be required to the extent relating solely to the Head Lease) (or its successors and/or assigns). This Lease is intended by the parties as a final expression of their lease agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. No representations, undertakings or agreements have been made or relied upon in the making of this Lease other than those specifically set forth in the Operative Documents and the deliveries made in connection therewith.

#### Section 27.06. Headings.

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

#### Section 27.07. Governing Law.

This Lease shall be governed by, and construed in accordance with, the laws of the State in which the Property is situated.

EACH PARTY HERETO SUBMITS TO NON-EXCLUSIVE PERSONAL JURISDICTION IN THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF NEW YORK (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF SUCH PERSON'S OBLIGATIONS HEREUNDER AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN

SUCH STATE FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE OBLIGATIONS OWING TO ANY PERSON HEREUNDER. EACH PARTY HERETO HEREBY WAIVES AND AGREES NOT TO ASSERT AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE (A) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE IN THOSE COURTS OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (B) THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR (C) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER. EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATED TO THE ENFORCEMENT OF THIS LEASE.

**THE PARAGRAPH SET FORTH ABOVE SHALL APPLY TO ANY SIGNATORY HERETO AND THE SUCCESSORS AND ASSIGNS OF ANY PARTY OR SIGNATORY HERETO.**

Section 27.08. Estoppel Certificates.

Each party hereto agrees that at any time and from time to time during the Lease Term (but on no more than two occasions during each Lease Year), it will promptly, but in no event later than ten (10) days after receipt of request by the other party hereto, execute, acknowledge and deliver to such other party a certificate in the form of Exhibit C attached hereto (in each case, to the extent the items set forth therein are true as of the date of such certification). In addition, each party agrees to include in such certificate such other items as may be reasonably requested under the circumstances giving rise to the delivery of such certificate (in each case, to the extent the items set forth therein are true as of the date of such certification). Such certificate may be relied upon by any bona fide, permitted purchaser of, or mortgagee with respect to, Lessor's or Lessee's interest in the Property (direct or indirect), or any prospective sublessee of Lessee in respect of the Property.

Section 27.09. Easements.

So long as no Lease Default or Lease Event of Default has occurred and is then continuing, and provided that no such action could reasonably be expected to have an adverse effect upon Lessee's ability to perform its obligations under the Operative Documents, or on the Fair Market Rental Value or Fair Market Sales Value of the Property (or any portion thereof, including the Equipment), Lessor will join with Lessee from time to time at the request of Lessee (and at Lessee's sole cost and expense) to:

(a) subject to the terms of Article XII, sell, assign, convey or otherwise transfer an interest in any or all of the Property to any Person legally empowered to take such interest under the power of eminent domain (and to the extent required with respect to the Equipment, the Head Lessee will cause Head Lessor to execute a bill of sale with respect to the Equipment, to the extent subject to such eminent domain proceeding, such bill of sale to be "as-is," "where-is" and without representation or warranty other than a warranty as to no Lessor Liens arising under Head Lessor), and dedicate or transfer unimproved portions of any or all of the Property for road, highway or other public purposes so long as not adversely effecting access to or the value of the Property;

(b) upon approval by Lessor, which approval shall not unreasonably be withheld, (i) grant new (or release existing) easements, servitudes, licenses, rights of way and other rights and privileges in the nature of easements, with respect to the Property, and (ii) execute amendments to any covenants and restrictions affecting the Property; and

(c) execute and deliver any instrument, in form and substance reasonably acceptable to Lessor (and to the extent affecting or having the potential to affect the Equipment, in form and substance reasonably acceptable to Head Lessor), necessary or appropriate to make or confirm the grants, releases or other actions described above in Section 27.09(a) and Section 27.09(b).

Section 27.10. No Joint Venture.

Any intention to create a joint venture or partnership relation between Lessor and Lessee is hereby expressly disclaimed.

Section 27.11. No Accord and Satisfaction.

The acceptance by Lessor or any other Person of any sums from Lessee (whether as Rent or otherwise) in amounts which are less than the amounts due and payable by Lessee hereunder is not intended, nor shall be construed, to constitute an accord and satisfaction, or compromise, of any dispute between such parties regarding sums due and payable by Lessee hereunder, unless Lessor or any other Person specifically deems it as such in writing.

Section 27.12. No Merger.

In no event shall the leasehold interests, estates or rights of Lessee hereunder or of the Agent or Head Lessor merge with any interests, estates or rights of Lessor in or to any and all of the Property, it being understood that such leasehold interests, estates and rights of Lessee hereunder, and of the Agent or Head Lessor shall be deemed to be separate and distinct from Lessor's interests, estates and rights in or to the Property, notwithstanding that any such interests, estates or rights shall at any time or times be held by or vested in the same Person.

### Section 27.13. Lessor Bankruptcy.

During the Lease Term the parties hereto agree that if Lessee elects to remain in possession of any and all of the Property after the rejection of the Lease by Lessor under Section 365(h) of the Bankruptcy Code all of the terms and provisions of this Lease shall be effective during such period of possession by Lessee.

### Section 27.14. Naming and Signage of the Property.

So long as no Lease Event of Default shall have occurred and be continuing, Lessee shall have the sole and exclusive right, at any time and from time to time, to select the name or names of the Property and the Improvements, and the sole and exclusive right to determine not to use any name in connection with the Property, as well as all rights in respect of signage for or in connection with the Property, in any case so long as in compliance with Applicable Laws, Lessor shall not have or acquire any right or interest with respect to any such name or names used at any time by Lessee, or any trade name, trademark service mark or other intellectual property of any type of Lessee.

### Section 27.15. Investments.

Any moneys held by Lessor (or by the Agent, Servicer or Proceeds Trustee) pursuant to this Lease, including Sections 8.06 and 12.04, except when there exists a Lease Default or Lease Event of Default shall, until paid to Lessee, be invested by Lessor or, if the Debt Documents are in effect, by the Agent or Proceeds Trustee, as the case may be, in Permitted Investments as directed by or on behalf of Lessee. Any gain (including interest received) realized as a result of any such investment (net of any fees, commissions, Taxes and other expenses, if any, incurred in connection with such investment) shall be retained with, and distributed and re-invested in the same manner, as the original principal amount. None of Lessor, Agent, Servicer, Proceeds Trustee or any other Person (other than Lessee) holding, investing and reinvesting monies at any time under this Lease shall have any liability for any losses arising from any such Permitted Investments or reinvestments and any losses incurred in holding, investing and reinvesting monies shall be subject to indemnity from Lessee. At such time as there no longer exists a requirement under this Lease for the Lessor, Agent or other holder of any proceeds to hold such proceeds, and no Lease Default or Lease Event of Default is continuing, such amounts, together with any income thereon, shall be disbursed to Lessee or other Person entitled thereto pursuant to the relevant terms of the Operative Documents.

### Section 27.16. Further Assurances.

Lessor and Lessee, at the cost and expense of the Lessee, will cause to be duly taken, executed, acknowledged and delivered as promptly as reasonably practicable all such further acts, documents and assurances as any party to any Operative Document reasonably may request from time to time in order to carry out more effectively the intent and purposes of this Lease and the other Operative Documents.

### Section 27.17. Conveyance Expenses.

All transfer taxes, title insurance premiums, and other costs, fees and expenses (including reasonable attorneys fees and expenses) incurred in connection with the transfer of any or all of the Property to Lessee under Articles XI, XII, XIII or XXIII or otherwise arising under this Lease shall be paid by Lessee. All such amounts incurred in connection with a transfer to Lessee or its designee under Article IV shall be paid in accordance with the terms of the relevant offer.

### Section 27.18. Independent Covenants.

The covenants of Lessor and Lessee herein are independent and several covenants and not dependent on the performance of any other covenant in this Lease.

### Section 27.19. Lessor Exculpation.

Anything to the contrary in this Lease notwithstanding, the covenants contained in this Lease to be performed by Lessor shall not be binding on any member of Lessor. Covenants of Lessor under this Lease are made for the purpose of binding only all of Lessor's right, title and interest in and to the Property and any proceeds thereof, and, except as expressly provided below, none of the Lessor nor any of its Affiliates or any successors and assigns thereof shall have any liability under this excess of such Person's interest in the Property and the proceeds thereof. Lessor shall be fully liable to the extent of its assets with respect to (i) Lessor Liens arising by, through or under the Lessor or any equity owner thereof or (ii) any breach of the Lessor of its covenants under Section 22.02, 25.01, 26.01 or 27.02 (to the extent the Lessor acts at the written direction of the equity owner of Lessor).

### Section 27.20. Holding Over.

Lessee covenants that if for any reason Lessee or any subtenant of Lessee shall fail to vacate and surrender possession of the Property or any part thereof on or before the applicable return date or the expiration or earlier termination of this Lease (the "Lease Expiration Date"), then Lessee's continued possession of the Property shall be as a tenant at sufferance, during which time, without prejudice and in addition to any other rights and remedies Lessor may have hereunder or at law, Lessee shall pay to Lessor an amount equal to: (a) one hundred twenty-five percent (125%) of the total monthly amount of Rent payable hereunder immediately prior to such termination (the "Existing Rent") for the first

thirty (30) days during which Lessee holds over, and (b) one hundred fifty percent (150%) of the Existing Rent thereafter. The provisions of this Section shall not in any way be deemed to (i) permit Lessee to remain in possession of the Property after the Lease Expiration Date or sooner termination of this Lease, or (ii) imply any right of Lessee to use or occupy the Property upon expiration or termination of this Lease and no acceptance by Lessor of payments from Lessee after the Lease Expiration Date shall be deemed to be other than on account of the amount to be paid by Lessee in accordance with the provisions of this Section. Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease.

#### Section 27.21. Survival.

All representations and warranties made herein and all indemnity, reimbursement and other obligations arising hereunder relating to the payment of costs or expenses incurred by any Person shall survive the closing and termination of this Lease and shall be deemed to extend any applicable statute of limitations to the extent that a third party has made a Claim against any Person entitled to indemnity or reimbursement hereunder where such third party is legally entitled to bring any such Claim under any statute of limitations applicable thereto.

#### Section 27.22. [INTENTIONALLY OMITTED]

#### Section 27.23. Lease Subordinate.

This Lease, the leasehold estate of Lessee created hereby and all rights of Lessee hereunder are and shall be subject and subordinate to the Mortgage, the Head Lease and all renewals, modifications, consolidations, replacements and extensions of the Mortgage and the Head Lease; provided, that the relevant parties shall have executed and delivered the SNDA.

#### Section 27.24. Intent of Parties; Security Interest.

The parties hereto intend for this Lease to constitute a true lease for income tax purposes and for purposes of commercial law. In the event that for any reason this Lease shall not be construed to constitute a true lease and shall constitute a financing for commercial law or other purposes, the Lessee hereby grants to Lessor a first priority security interest in and to the Equipment and agrees to take such action at its expense as may be necessary, prudent or requested by Lessor to perfect and preserve the first priority perfected nature of the security interest intended to be granted hereby.

#### Section 27.25. Certain Rights of Agent.

Notwithstanding anything to the contrary contained in the Lease or any other Operative Document, so long as any obligation of the Lessor under the Debt Documents remains unsatisfied, the following provisions shall apply:

(a) In the event that any event or circumstance shall arise regarding which Lessee may predicate a claim of a default or breach by Lessor of any of its obligations under the Lease, upon serving notice on Lessor, Lessee shall at the same time serve a duplicate counterpart of such notice to the Agent and the Head Lessor pursuant to the provisions of Section 27.03, and no notice by Lessee to Lessor shall be deemed to have been served unless and until such duplicate counterparts thereof have also been served on the Agent and Head Lessor.

(b) Lessee specifically agrees not to terminate the Lease as a result of any default by Lessor without the prior written consent of Agent and each other relevant Participant.

(c) The Agent shall have the right within the period provided to Lessor to remedy or cause to be remedied any default or matter on which Lessee may predicate a claim of a default, but in no event less than thirty (30) days from the date notice is served on such Participant (and if such default cannot reasonably be cured within such thirty (30) day period, such longer period as may reasonably be required to cure such default so long as any Participant is proceeding in good faith and with due diligence to cure such default), and Lessee shall accept such performance as if the same had been performed by Lessor. In that regard, Lessor constitutes and appoints Agent and its respective designees as Lessor's agent and attorney in-fact with full power, in Lessor's name, place and stead, and at Lessor's cost and expense to perform any of Lessor's obligations according to the provisions of this Lease. Such appointment is coupled with an interest and is irrevocable. In this regard, each Agent and its designees are irrevocably granted full and complete access and right of entry to the Property by Lessor and Lessee for purposes of curing any default of Lessor declared to exist by Lessee under the terms of this Lease.

(d) At the written request of Agent or any relevant Participant, as the case may be, within ninety (90) days prior to the termination of this Lease for any reason, Lessee shall enter into a new or direct Lease of the Property with Agent and each relevant Participant, as the case may be, or any of their respective designees, which designee will be approved by Lessee, with such approval not to be unreasonably withheld, effective upon termination of the Lease. Such new or direct lease shall be effective as of the date of termination of this Lease, and shall be for the remainder of the term of this Lease at the rent and on all other agreements, terms, covenants and conditions of this Lease; provided, however, that no provision shall be contained in the new lease which relates to any default under this Lease that cannot reasonably be cured by Agent or such relevant Participant, as the case may be. On the execution of such new or direct lease, Lessee shall pay any and all sums which would at the time of execution and delivery thereof be due under this Lease. Agent and such relevant Participant shall pay all necessary and reasonable expenses, including reasonable attorneys' fees and expenses incurred by Lessee in connection with Lessor's default as well as in connection with the preparation, execution and delivery of such new or direct lease.



(e) Except as otherwise expressly provided, no Participant shall be liable to perform any of Lessor's obligations under this Lease unless and until either such Person or any designee thereof shall become the owner of the Property and then only so long as it remains the owner of the Property.

Section 27.26. Counterparts, Memorandum.

This Lease may be simultaneously executed in multiple counterparts, each of which when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes. Lessee and Lessor agree that a memorandum of this Lease (and any amendment hereof) shall be executed and recorded at the direction of either Lessor or Lessee, but at Lessee's expenses, in the land records of the jurisdiction in which the Property is situated.

Section 27.27. Confidentiality.

Lessor and Lessee shall hold all non-public information arising from this Lease in accordance with their customary procedures for handling confidential information (except to the extent required by Applicable Law).

The parties hereto agree that no press release or other public disclosure shall be made by either of them or any of their respective agents concerning this transaction without the prior written consent of the other. However, Lessee agrees that a "tombstone" type advertisement may be placed by Lessor or any Holder after consummation of the transactions contemplated hereby; provided, however, that Lessor or such Holder agrees to inform Lessee thereof prior to placing such advertisement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Lessor and Lessee have duly authorized, executed and delivered this Lease as of the date first hereinabove set forth.

**LESSOR:**

**FU/DG FULTON, LLC**

By: /s/ Benjamin F. Williams, Jr.

Name: /s/ Benjamin F. Williams, Jr.  
-----

Title: Senior Vice President and  
Managing Director  
-----

**LESSEE:**

**DOLLAR GENERAL CORPORATION**

By: /s/ Wade Smith

Name: /s/ Wade Smith  
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Title: Treasurer  
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## APPENDIX A

Unless otherwise specified or the context otherwise requires, the following rules of usage (the "Rules of Usage") shall apply:

- (a) any term defined below by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect;
- (b) words which include a number of constituent parts, things or elements, shall be construed as referring separately to each constituent part, thing or element thereof, as well as to all of such constituent part, things or elements as a whole;
- (c) references to any Person include such Person's successors and assigns and in the case of an individual, the word "successors" includes such Person's heirs, devisees, legatees, executors, administrators and personal representatives;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing a gender include any gender;
- (f) the words "consent," "approve," "agree" and "request," and derivations thereof or words of similar import, mean the prior written consent, approval, agreement or request of the Person in question;
- (g) a reference to a part, clause, party, section, article, exhibit or schedule is a reference to a part and clause of, and a party, section, article, exhibit and schedule to, such Operative Document;
- (h) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and ordinances issued or otherwise applicable under that statute;
- (i) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (j) a reference to a party to a document includes that party's permitted successors and assigns;
- (k) the words "including" and "includes," and words of similar import, shall be deemed to be followed by the phrase "without limitation;"
- (l) the words "hereof" and "hereunder," and words of similar import, shall be deemed to refer to the Operative Document as a whole and not to the specific section or provision where such word appears;

(m) as the context shall require except in the case of an Event of Loss and other relevant circumstances which contemplate an occurrence with respect to the entire Property, a reference to the "Property" or "Improvements" shall be deemed to be followed by the phrase "or a portion thereof";

(n) the Schedules and Exhibits of the Operative Documents are incorporated in the Operative Documents to which such Schedules and Exhibits are attached;

(o) the titles and headings of Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses are inserted as a matter of convenience and shall not affect the construction of the Operative Documents;

(p) references to any Operative Document includes all amendments, supplements, consolidations, replacements, restatements, extensions, renewals and other modifications thereof, in whole or in part; and

(q) any term defined in any Operative Document and used in any other Operative Document but not defined therein shall have the meaning given such term in the Operative Document in which such term is defined.

"Actual Knowledge" with respect to any Person, shall mean the present, conscious, actual knowledge of, or receipt of notice by (i) senior officers of such Person or the officers or employees of such Person charged with the oversight on its behalf of the Overall Transaction or (ii) with respect to a matter covered by a representation and warranty, those officers having responsibility for the matters covered by such representation and warranty.

"Additional Renewal Term" shall have the meaning specified in Section 5.01 of the Lease.

"Address" shall mean, subject to the rights of the party in question to change its Address in accordance with the terms of the Operative Documents:

(i) with respect to the Lessor, to FU/DG Fulton, LLC, One First Union Center, TW-6, Charlotte, NC 28288-0166, Attn: Abizar Rangwala, Vice President, facsimile number (704)383-8108 with a copy to: Timothy Danello, Senior Vice President and Assistant General Counsel, First Union Corporation, 301 South College Street, NC0630, Charlotte, NC 28288-0630, facsimile number (704) 383-0649;

(ii) with respect to Lessee, to Dollar General Corporation, 100 Mission Ridge, Goodlettsville, TN 37072, Attn: Treasurer, facsimile number (615) 855-4809, with a copy to the same address, Attn: Larry Wilcher, General Counsel, facsimile number (615) 855-5172;

(iii) with respect to Head Lessor, to First Union Commercial Corporation, One First Union Center, TW-6, Charlotte, NC 28288-0166, Attn: Abizar Rangwala, Vice President, facsimile number (704) 383-8108 with a copy to: Timothy Danello, Senior Vice President and Assistant General Counsel, First Union Corporation, 301 South College Street, NC0630, Charlotte, NC 28288-0630, facsimile number (704) 383-0649;

(iv) with respect to the Agent, to Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-0001, Attn: Donald MacKelcan, facsimile number (302) 651-1576, with a copy to Lewis C. Ledyard, III, Morris, James, Hitchens & Williams, LLP, 222 Delaware Avenue, P.O. Box 2306, Wilmington, Delaware 19899-2306, facsimile number (302) 571-1750; and

(v) with respect to the Servicer, to First Union National Bank, First Union Capital Markets, NC 1075, 9739 Research Drive, UIRP-4, Charlotte, NC 28288-1075, Attention: Dollar General, Facsimile (704) 593-7735 with a copy to: Timothy Danello, Senior Vice President and Assistant General Counsel, First Union Corporation, 301 South College Street, NC0630, Charlotte, NC 28288-0630, facsimile number (704) 383-0649.

"Adjusted Net Worth" means the consolidated net worth of such Person in accordance with GAAP as determined for the most recent quarter for which financial statements are available (which in the case of any year end financial statements shall be audited) for such Person preceding the period of determination less (i) the amount of any and all guarantees made by such Person of obligations (which obligations would be on-balance sheet with respect to the below-described Affiliate) of (x) any Affiliate of such Person that holds beneficially or of record, five percent (5%) or more of the equity securities of such Person and (y) any Affiliate of any such Affiliate (other than Person and any subsidiaries of such Person whose financial statements are consolidated with such Person's financial statements) and (ii) intangible assets (including, without limitation, franchises, patents, patent applications, trademarks, brand names, good will and research and development expense), in the case of the foregoing as determined GAAP.

"Affiliate" of any Person shall mean any other Person directly or indirectly controlling, controlled by or under common control with, such Person and shall include, if such Person is an individual, members of the Family of such Person and trusts for the benefit of such individual. For purposes of this definition, the term, "control" (including the correlative meanings of the terms "controlling" "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"After-Tax Basis" means, with respect to any payment received or accrued by any Person, the amount of such payment (the "base payment") supplemented by a further payment (the "additional payment") to that Person so that the sum of the base payment plus the additional payment shall, after taking into account the amount of all Taxes required to be paid by such Person in respect of the receipt or accrual of the base payment and the additional payment (after any current credits or deductions arising therefrom and the timing thereof), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to U.S. federal, state and local income taxation at the highest marginal rates applicable to individuals or corporations (as the case may be) resident or domiciled in the jurisdiction where the recipient of such payment is located (or where the recipient indicates such payment will be required to be reported, if different).

"Agent" shall mean Wilmington Trust Company, a Delaware banking corporation, and each successor Agent, as Agent under the Note Purchase Agreement, and to the extent provided therein, under any other Operative Document.

"Alterations" shall mean alterations, improvements, installations, demolitions, modifications, changes and additions to the Property, but shall not include Lessee's Equipment and Personalty.

"Anticipated Lease Income" shall mean the amounts expected to be included in gross income with respect to this Lease including only (i) Interim Rent, Base Rent and Renewal Rent, if any, (ii) payments as a consequence of a sale or other disposition (other than in the case of the exercise of remedies after a Lease Event of Default) of the Property and (iii) an amount received pursuant to the indemnity set forth in Section 19.03.

"Applicable Laws" shall mean all existing and future applicable laws (including common laws), rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of any Governmental Authorities, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to the environment and those pertaining to the construction, use or occupancy of the Property). Applicable Laws shall include Environmental Laws.

"Appraisal" shall mean any appraisal required to be delivered on or prior to the Closing Date and any other appraisal provided by the Appraisal Procedure.

"Appraisal Procedure" shall mean the following procedure for determining any one or more of the Fair Market Sales Value of the Real Property or Equipment, the Fair Market Rental Value of the Real Property or Equipment or any other amount which may, pursuant to any provision of any Operative Document, be determined by the Appraisal Procedure: one Qualified Appraiser, chosen by the Lessor and approved by FSL Group, which approval shall not unreasonably be withheld, delayed or conditioned, but if the Lessee shall fail to agree with the selection of the Lessor's Qualified Appraiser then Lessee shall have the right to engage a Qualified Appraiser. However, if the Lessee fails to choose a Qualified Appraiser within twenty (20) Business Days after written notice from the Lessor of the selection of its Qualified Appraiser followed by a second notice (which notice shall specifically state that failure to select a Qualified Appraiser within ten (10) Business Days shall prohibit appointment of a Qualified Appraiser by the addressed party) given at least ten (10) Business Days prior to the expiration of such twenty-day period, then the appraisal by such appointed Qualified Appraiser shall be binding on the parties. If the two Qualified Appraisers cannot agree on a value within twenty (20) Business Days after the appointment of the second Qualified Appraiser, then a third Qualified Appraiser shall be selected by the two Qualified Appraisers or, failing agreement as to such third Qualified Appraiser within thirty (30) Business Days after the appointment of the second Qualified Appraiser, by the American Arbitration Association office in New York, New York. Each of the three Qualified Appraisers shall use its best efforts to cause its appraisal to be given within twenty (20) Business Days of the appointment of the third Qualified Appraiser (and in any event, as soon as practicable thereafter) and the appraisal of the Qualified Appraiser most different from the mean average of the

other two shall be discarded and such mean average of the remaining two Qualified Appraisers shall be binding on the parties; provided, that if the highest appraisal and the lowest appraisal are equidistant from the third appraisal, the third appraisal shall be binding on the parties. The fees and expenses of each Qualified Appraiser shall be borne equally by the parties for whom such appraisal is being prepared. Notwithstanding the foregoing, in the case of any appraisal arising from any Lease Event of Default, the Lessee shall bear all costs and expenses of the Qualified Appraiser, and in such case, the party whose default has necessitated the Appraisal shall have no right to object to or choose a Qualified Appraiser and such Qualified Appraiser shall be chosen at the sole discretion of the non-defaulting party.

"Approved Environmental Consultant" shall mean WI Environmental, Inc. with respect to any environmental report provided on the Closing Date, and any other environmental consultant selected by Lessee and acceptable to Lessor that is registered as a "Registered Environmental Property Assessor" by the National Registry of Environmental Professionals, certified as a "Certified Environmental Professional" by the Academy of Board Certified Environmental Professionals, or holds an equivalent designation or certification by an equivalent certifying organization.

"Acquisition Notice" shall have the meaning specified in Section 4.01(a) of the Lease.

"Areas of Environmental Concern" shall have the meaning specified in Section 8.05(c) of the Lease.

"Assignment of Head Lease" shall mean the Assignment of Head Lease Rights dated as of June 1, 2000, by and between the Head Lessee, as assignor, and the Agent, as assignee, for the benefit of the Holders.

"Assignment of Lease" shall mean the Lease Assignment and Agreement dated as of June 1, 2000, by and among the Lessor, as assignor, and the Agent, as assignee, for the benefit of the Holders and the Head Lessor, with respect to the Lease.

"Authorized Officer" shall mean with respect to a Person if the Person is not an individual, any officer or principal of the Person, any trustee of the Person (if the Person is a trust), any general partner or joint venturer of the Person (if the Person is a partnership or joint venture) or any manager of a manager-managed limited liability company or any member of a member-managed limited liability company, in each case who shall be duly authorized to execute the Operative Documents or take other action with respect thereto, as the case may be.

"Bankruptcy Code" shall mean the Bankruptcy Reform Act of 1978 as amended and as may be further amended.

"Base Rent" shall mean, for the Base Term, the rent payable pursuant to Section 3.01 of the Lease, as such Base Rent may be required to be adjusted in accordance with the first paragraph of Section 6 of the SNDA Agreement.

"Base Term" shall mean the period commencing on the day next succeeding the last day of the Interim Term and ending on June 30, 2022, or such shorter period as may result from the earlier termination of the Lease as provided therein.

"Bill of Sale" as the context applies, shall mean either of the Bill of Sale dated on or about the Closing Date executed by Seller on behalf of Head Lessor with respect to the Equipment or the Bill of Sale dated on or about the Closing Date executed by Seller on behalf of Lessor with respect to the Improvements and Fixtures, and "Bills of Sale" shall mean both of the above-referenced Bills of Sale.

"Board of Directors," with respect to a corporation, means either the Board of Directors or any duly authorized committee of that Board which pursuant to the by-laws of such corporation has the same authority as that Board as to the matter at issue.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks are authorized to be closed in the State of New York, the State of North Carolina or the State of Tennessee.

"Casualty" shall mean any damage or destruction caused to any Property by any reason, whether or not constituting an Event of Loss.

"Claims" shall mean Liens (including, without limitation, lien removal and bonding costs) liabilities, obligations, damages, losses, demands, penalties, assessments, payments, fines, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including, without limitation, reasonable legal fees and expenses and costs of investigation) of any kind and nature whatsoever.

"Closing Date" shall mean the date on which the Real Property is acquired by the Lessor and the Equipment is acquired by the Head Lessor.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Condemnation" shall mean any condemnation, requisition or other taking or sale of the use, occupancy or title to any or all of the Property, by or on account of any eminent domain proceeding or other action by any Governmental Authority or other Person under the power of eminent domain or otherwise or any transfer in lieu of or in anticipation thereof.

"Confidential Information" shall mean all federal, state and local tax returns of any relevant Person and all work papers and support information related thereto; provided that "Confidential Information" shall exclude any items of income or expense of any Person for which an adjustment has been proposed and for which Lessee is obligated to provide as indemnity under Article XIX of the Lease to the extent the proposed adjustment does not relate to any other item of income or expense of such Person or such item of income and expense can be severed by the authority proposing the adjustment from any proposed adjustment to any other item of income and expense of such Person.

"Controlling Party" shall have the meaning specified in Section 19.02(e) of the Lease. "Credit Party" shall mean Dollar General Corporation and its respective successors and assigns.



"Debt Documents" shall mean (i) the Note, (ii) the Mortgage, (iii) Note Purchase Agreement, (iv) the Assignment of Lease, (v) the Assignment of Head Lease, (vi) the SNDA Agreement. (vii) the Intercreditor Agreement and (viii) UCC financing statements required to be filed in connection with any of the foregoing.

"Default Rate" shall mean three percent (3%) above the annual rate of interest set by First Union National Bank (or any successor thereto) as its "prime rate" from time to time. Such prime rate is not the lowest or best rate offered to customers of First Union National Bank.

"Environmental Laws" shall mean and include the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. ss. 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. ss. 9601-9657 (CERCLA), the Hazardous Materials Transportation Act of 1975, 49 U.S.C. ss. 1801-1812, the Toxic Substances Control Act, 15 U.S.C. 2601-2671, the Clean Air Act, 42 U.S.C. ss. 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. ss. 136 et seq. and all other federal, state, or local laws, ordinances, rules, orders, statutes, codes and regulations applicable to the Property and relating to the environment (i) relating to the environment, human health or natural resources; (ii) regulating, controlling or imposing liability or standards of conduct concerning Hazardous Materials; or (iii) regulating the clean-up or other remediation of the Property, as any of the foregoing may have been or may be amended, supplemented or supplanted from time to time.

"Environmental Reports" shall mean the reports and information covering the Property prepared by the Approved Environmental Consultant as a condition precedent to closing the transactions contemplated by the Operative Documents and any subsequent report or information covering the Property prepared by an Approved Environmental Consultant and delivered by the Lessee to the Lessor or Agent.

"Equipment" shall mean that property described on Exhibit B hereto with such alterations, modifications, replacements, substitutions or other improvements that may result with respect thereto in accordance with the terms of the Operative Documents.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974.

"ERISA Group" means Dollar General Corporation and: (i) each corporation, trade or business which is a member, with Dollar General Corporation, of a controlled group of corporations within the meaning of Code Section 414(b) and the regulations issued thereunder; (ii) each group of trades or businesses (whether or not incorporated) under common control with Dollar General Corporation, determined in accordance with Code Section 414(c) and the regulations issued thereunder; (iii) each organization (whether or not incorporated) which is a member with Dollar General Corporation of an affiliated service group as defined in Code Section 414(m) and the regulations issued thereunder; and (iv) any other entity, to the extent required to be aggregated with Dollar General Corporation under regulations issued pursuant to Code Section 414(o).

"Event of Loss" shall mean (y) the damage, by fire or otherwise, and whether total or partial, that (A) the Lessee in its commercially reasonable discretion shall determine that as a result of such damage the Property is no longer useful for its intended purpose, and (B) the cost of repair or restoration would exceed seventy-five percent (75%) of the Property Cost for such Property or (z) the permanent or material taking by Condemnation effecting (A) title to all or substantially all of the Property, or (B) the principal points of ingress or egress of the Property to public roadways, or (C) such a material part of the Land or the Improvement so as to have a material and adverse effect on the business of the Lessee. Any decision regarding whether the restoration of the balance of the Property is uneconomic or impractical shall be made by Lessee in good faith and evidenced by an Officer's Certificate of Lessee delivered to Lessor.

"Existing Rent" shall have the meaning specified in Section 27.20 of the Lease.

"FSL Group" shall mean Financial Structures Limited, a company organized under the laws of Bermuda.

"Fair Market Rental Value" with respect to the Property (or any portion thereof) shall mean the fair market monthly rental value that would be obtained in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor, in each case under no compulsion to lease, and neither of which is related to Lessor or Lessee or an Affiliate thereof, for the lease of such Property on the terms set forth, or referred to, in Article V of the Lease. Except for any determination to be made in connection with a Lease Event of Default (which shall be made based upon the actual condition of the Property (or relevant portion thereof)), such fair market rental value shall be calculated as the value for the use of such Property (or relevant portion thereof) assuming that such Property (or relevant portion thereof) is in the condition and repair required to be maintained by the terms of the Lease.

"Fair Market Sales Value" with respect to the Property (or any portion thereof) shall mean the fair market sales value that would be obtained in an arm's-length transaction between an informed and willing buyer (other than a lessee currently in possession) and an informed and willing seller, under no compulsion, respectively, to buy or sell, and neither of which is related to Lessor or Lessee, for the purchase of the Property (or relevant portion thereof). Except for any determination to be made in connection with a Lease Event of Default (which shall be made based upon the actual condition of the Property (or relevant portion thereof)), such Fair Market Sales Value shall be calculated as the value for such Property (or relevant portion thereof) using the same methodology as used in the appraisals delivered on or before the Closing Date (and if more than one methodology is used i.e., based on a methodology that includes as an assumption that the Lease is in effect and a methodology that includes an assumption that the Lease is not in effect and no opinion is given as to one value, then using the methodology that results in the highest value) and assuming that the Property (or relevant portion thereof) is in the condition and repair required to be maintained by the terms of the Lease.

"Fair Market Sales Value (Dark)" with respect to the Real Property shall mean the fair market sales value that would be obtained in an arm's-length transaction between an informed and willing buyer and an informed and willing seller; under no compulsion, respectively, to buy or sell, and neither of which is related to Lessor or Lessee, for the purchase of the Real Property, assuming that the Real Property (i) is in the condition and repair required to be maintained by the terms of the Lease, (ii) is unencumbered by the Lease or any other tenancy and (iii) is vacant and available for immediate occupancy.

"Filing" shall have the meaning specified in Section 19.02(j) of the Lease.

"Final Governmental Approval" shall have the meaning specified in Section 8.05(e) of the lease.

"Final Payment Date" shall have the meaning specified in Section 17.01(e) of the Lease.

"First Renewal Term" shall have the meaning specified in Section 5.01 of the Lease.

"Fitch" shall mean Fitch IBCA Inc. and its successors.

"Fixtures" shall have the meaning specified in the term "Property."

"GAAP" shall mean generally accepted accounting principles in the United States, as in effect from time to time, consistently applied.

"Governmental Action" shall mean all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments or decrees (to the extent directly applicable to the Property or any portion thereof, the Lessor or the Lessee), licenses, exemptions, required by, any Governmental Authority, or required by any Applicable Laws, and shall include, without limitation, all sitings, environmental and operating permits and licenses that are required for the use, occupancy, zoning and operation of the Property.

"Governmental Authority" shall mean any federal, state, county, municipal or other governmental or regulatory authority, agency, board, body, instrumentality, court or quasi governmental authority (or private entity in lieu thereof).

"Hazardous Material" shall mean any substance, waste or material (including those that are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, including petroleum, its derivatives, by-products and other hydrocarbons and asbestos), in each case that is or becomes defined by any Governmental Authority as a hazardous substance, hazardous material, toxic pollutant, toxic substance or hazardous waste and is either (a) regulated by any Governmental Authority, including any agency, department, commission, board or instrumentality of the United States and/or each State in which the Property is situated, or (b) may form the basis of liability under any Environmental Law.

"Head Lessor" shall mean First Union Commercial Corporation, a North Carolina corporation.

"Holder" shall mean, as of any particular date, any holder of one or more Note as of such date.

"Impositions" shall mean, collectively, all real estate taxes on the Property, all ad valorem, sales and use, single business, gross receipts, transaction privilege, rent or similar taxes levied or incurred with the respect to the Property, or the use, lease, ownership or operation thereof, personal property tax on any Property that is classified by government authorities as

personal property, assessments (including all assessments for public improvements or benefits, whether or not commenced or completed within the Lease Term), water, sewer, utilities or other rents and charges, excises, levies, fees and all other governmental charges of any kind or nature whatsoever, general or special, foreseen or unforeseen, ordinary or extraordinary, with respect to the Property or any part thereof and/or the Rent, including all interest and penalties thereon, which at any time prior to, during or with respect to the Lease Term may be assessed or imposed on or with respect to or be a Lien upon Lessor or the Property or any part thereof or any rent therefrom or any estate, title or interest therein. Impositions shall exclude, however, and nothing contained in the Lease or any other Operative Document shall be construed to require Lessee to pay, (i) any tax imposed on any Participant based on the net income of such Participant, except to the extent that any tax described in this clause (i) is levied, assessed or imposed as a total or partial substitute for a tax, assessment, levy or charge upon the Property, the Rent or any part thereof or interest therein which Lessee would otherwise be required to pay thereunder or except to the extent arising from a transfer of the Property or any portion thereof upon the exercise of remedies upon a Lease Event of Default; (ii) any tax imposed with respect to the sale, exchange or other disposition of the Property or any portion thereof by Lessor or the Holders or Agent or the proceeds thereof except a transfer arising from the exercise of remedies upon a Lease Event of Default; or (iii) any gross receipts, transaction privilege, doing business or similar tax, assessment, levy or charge upon Lessor, the Property or any part of any thereof or interest therein, but solely to the extent that the same is levied, assessed or imposed as a total or partial substitute for a tax, assessment, levy or charge described in clause (i) or clause (ii) which Lessee would otherwise not be required to pay hereunder.

"Improvements" shall have the meaning specified in the term "Property."

"Inclusion" shall have the meaning specified in Section 19.03(b) of the Lease.

"Indebtedness" shall mean the indebtedness evidenced by the Notes and secured by the Mortgage, and any replacement indebtedness thereof.

"Indemnitee" shall mean Lessor, any Holder, Agent, Servicer, any trustee under a Mortgage which is a deed of trust, the Proceeds Trustee, Head Lessor, each of their assignees or other transferees and each of their Affiliates and their respective officers, directors, employees, shareholders, members or other equity owners.

"Indemnity Agreement" shall mean that Indemnity Agreement dated as of June 1, 2000 made by Lessor and First Union Development Corporation, as the sole member of Lessor for the benefit of Head Lessor, and any similar indemnity agreement entered into by any successor Lessor and any member thereof or any successor member of member of the Lessor.

"Initial Appraiser" shall mean Sheets Hendrickson & Associates with respect to the Real Property and Collateral Evaluation Associates, Inc., with respect to the Equipment.

"Inspecting Parties" shall have the meaning specified in Article XV of the Lease.

"Intent to Renew Date" shall have the meaning specified in Section 5.01 (b)(i) of the Lease.

"Interim Rent" shall mean, for the Interim Term, the rent payable under Section 3.01 of the Lease.

"Interim Term" shall mean the period commencing on the Closing Date and ending on June 30, 2000, or such shorter period as may result from earlier termination of the Lease as provided therein.

"Investment Grade," with respect to any Person, so long as the senior unsecured obligations of such Person shall be publicly rated, shall mean that the senior unsecured obligations of such Person shall have a public rating of BBB+ (or higher) by Standard & Poor's and Baal (or higher) by Moody's, and if the senior unsecured obligations of such Person shall not be rated, such Person shall have a confidential debt rating, or a private internal classification, a private debt credit assessment by the Securities Valuation Office of NAIC or a NAIC I designation by the Securities Valuation Office of NAIC.

"Issuer" shall mean FUIDG Fulton, LLC, a Delaware limited liability company, as issuer under the Note Purchase Agreement.

"Land" shall have the meaning specified in the term "Property."

"Lease" shall mean the Lease Agreement dated as of June 1, 2000, between Lessor, as lessor, and Lessee, as lessee.

"Lease Default" shall mean any event, condition or failure which, with notice or lapse of time or both, would become a Lease Event of Default.

"Lease Event of Default" shall have the meaning specified in Article XVI of the Lease.

"Lease Expiration Date" shall have the meaning specified in Section 27.20 of the Lease.

"Lease Term" shall mean the full term of the Lease, including the Interim Term, Base Term and any Renewal Terms as to which Lessee exercises a renewal option pursuant to Article V of the Lease, or such shorter period as may result from earlier termination of the Lease as provided therein.

"Lease Year" shall mean each consecutive period of twelve (12) full calendar months occurring after the Closing Date; provided, however, that, if the Closing Date shall not be the first day of a month, then the first Lease Year shall also include the partial month in which the Closing Date occurs.

"Lessee" shall mean Dollar General Corporation, a Tennessee corporation.

"Lessee-Controlled Contest" shall have the meaning specified in Section 19.02(e) of the Lease.

"Lessee's Equipment and Personalty" shall mean all Lessee's personal property and trade fixtures including, without limitation, Lessee's inventory, non-building equipment, non- building machinery, racking, shelving, conveyer equipment, lifts, tractors, trailers and other vehicles used in the operation of Lessee's distribution center and trucking operation.

"Lessee Obligation" shall mean each and every obligation of the Lessee in whatever capacity arising under each Operative Document to which Lessee is a party and, in the event that any payment made by Lessee in connection with any Lessee Obligation shall be required to be restored or is rescinded or disgorged, such restoration, rescission or disgorgement shall result in such obligations becoming a Lessee Obligation.

"Lessor" shall mean FU/DG Fulton, LLC, a Delaware limited liability company, and as the context may require, in such other capacity as may be described in any other Operative Document.

"Lessor Liens" shall mean Liens on or against the Property or the Lease or any payment of Rent (a) which result from any act of, or any Claim against, Lessor or Head Lessor, or which result from any violation by Lessor or Head Lessor of any of the terms of the Operative Documents other than a violation due to a default by Lessee under the Lease or, with respect to the Head Lessor, a default by the Head Lessee under the Head Lease, (b) which result from Liens in favor of any taxing authority by reason of any Tax owing and payable by Lessor or Head Lessor, except that Lessor Liens shall not include any Lien resulting from any Tax for which Lessee is obligated to indemnify Lessor or Head Lessor (or any other Indemnitee), or (c) which result from any expenses owed, caused or occasioned by Lessor or Head Lessor or any of their employees or agents which are not indemnified by Lessee pursuant to Section 19.01 of the Lease, but shall exclude Permitted Liens and any Liens created by the Debt Documents and the Head Lease.

"Lessor Property" shall mean the right, title and interest of the Lessor in the Property, including Lessor's leasehold interest in the Equipment.

"Lien" shall mean any lien, mortgage, pledge, charge, security interest or encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, including, without limitation, any thereof arising under any conditional sale agreement, capital lease or other title retention agreement.

"Loan" shall have the meaning specified in the recitals to the Note Purchase Agreement.

"Loss" shall have the meaning specified in Section 19.03(b) of the Lease.

"Make-Whole Premium" in respect of a prepayment of the principal of any Secured Note and accrued interest, if any (such prepaid principal amount of such Note being hereinafter referred to as the "Prepaid Principal"), shall be calculated by the Issuer and certified to the Agent in an Officer's Certificate and mean the greater of (a) one percent (1%) and (b) the excess of:

(i) the sum of the respective present values as of the date such Make-Whole Premium becomes due and payable of: (A) each payment of a scheduled installment of principal required to be made with respect to such Prepaid Principal during the remaining term to maturity of such Note, (B) without duplication, the payment of the principal balance, if any, required

to be made at final maturity with respect to such Prepaid Principal, and (C) each payment of interest which would be required to be paid during the remaining term to maturity of such Note with respect to such Prepaid Principal, determined, in the case of each such required principal payment prior to maturity, principal payment at final maturity and interest payment, by discounting the amount thereof (on a monthly basis) from the date fixed therefor back to the date such Make-Whole Premium becomes due and payable at the Reference Rate (assuming for such purpose that all such payments were made when due pursuant to the terms thereof and hereof, and that no other payment with respect to such Prepaid Principal was made),

minus

(ii) the outstanding principal amount of the Note plus accrued interest, if any.

"Material Adverse Effect" shall mean any event, state of facts, circumstance or condition (a) with respect to any Person regarding whom a determination is to be made that could reasonably be expected to result in a decrease of at least five percent (5%) in the tangible net worth of such Person (excluding for these purposes good will, intangible assets and any upward adjustments in any asset from book value) based upon GAAP consistently applied,

(b) that could reasonably be expected to result in the invalidity or unenforceability of any Operative Document or the inability of any Person to exercise rights and remedies intended to afford such parties of the practical realization of the benefits intended to be available to them under the Operative Documents, (c) that could reasonably be expected to result in the invalidity or failure of priority or enforceability of any Lien on any Property created, or intended to be created by, any of the Operative Documents or (d) that could reasonably be expected to result in a decline of the value of the Land, Improvements and Fixtures or useful life thereof by five percent (5%) or more or the loss of use, or inability of the Lessee or the Head Lessee, as the case may be, to use, five percent (5%) of the Land, Improvements and Fixtures for the purposes for which it was intended.

"Memorandum of Lease" shall mean that certain Memorandum of Lease dated as of June 1, 2000, between Lessor and Lessee related to the Property.

"Moody's" shall mean Moody's Investors Service, Inc. and its successors.

"Mortgage" shall mean that certain Deed of Trust and Security Agreement dated as of June 1, 2000 herewith, relating to the Real Property as the same may be renewed, amended, modified, consolidated, replaced or extended.

"Mortgaged Property" shall mean the property the subject of the Mortgage.

"NAIC" shall mean the Securities Valuation Office of the National Association of the Insurance Commissioners and any successor thereto.

"Net Casualty Proceeds" with respect to the Property (or any portion thereof), shall mean the compensation and/or insurance payments net of the reasonable expenses of collecting such amounts incurred by any Person and received by the Lessee or its assignee or designee (including the Agent) in respect of the Property (or any portion thereof) by reason of and on account of a Casualty.

"Net Condemnation Proceeds" with respect to the Property (or any portion thereof), shall mean any award or compensation net of the reasonable expenses of collecting such amounts incurred by any Person and received by the Lessee or its assignee or designee (including the Agent) in respect of the Property (or any portion thereof) by reason of and on account of a Condemnation.

"Net Proceeds" shall mean Net Casualty Proceeds or Net Condemnation Proceeds as the context may require.

"Noncontrolling Party" shall have the meaning specified in Section 19.02(e) of the Lease.

"Nonseverable" shall describe an elective Alteration or part of an elective Alteration which cannot be removed from the existing Improvements, the Land or the Equipment without causing material damage to the Property, provided, that Lessee's Equipment and Personalty and the Equipment shall not be construed as Nonseverable.

"Note Purchase Agreement" shall mean the Note Purchase Agreement dated as of June 1, 2000 among the Issuer, the Holders and the Agent.

"Note Purchase Agreement Default" shall mean a "Default" as defined in the Note Purchase Agreement.

"Note Purchase Agreement Event of Default" shall mean an "Event of Default" as defined in the Note Purchase Agreement.

"Notes" shall mean the Notes issued under the Note Purchase Agreement and secured by the Mortgage.

"NRSRO" shall mean a nationally recognized statistical rating organization, which as of this date would include Standard & Poor's, Moody's and Fitch IBCA Inc.

"Officer's Certificate" of a Person or any Person signing on behalf of a Person shall mean a certificate signed, in the case of a partnership, by a general partner of such partnership, or in the case of a limited liability company, by a member of such limited liability company, or in the case of a corporation, by an Authorized Officer of such Person. Each Officer's Certificate delivered to any Person under any Operative Agreement shall include a statement that the signatory (a) has reviewed the activities of the entity on whose behalf the Officer's Certificate is being given with respect to the subject matter for which such Officer's Certificate is requested, (b) is familiar with the provisions of the relevant Operative Document to which the requested Officer's Certificate relates and (c) has, in such signatory's opinion, made such examination or investigation as is necessary to enable such signatory to act on an informed basis in responding to such request.

"Operative Documents" shall mean the Sale and Purchase Agreement, the Debt Documents, the Lease, the Memorandum of Lease, the SNDA Agreement, the Deed, the Bills of Sale and other instruments of transfer in connection with the Property, including the Equipment, the Head Lease, the Intercreditor Agreement, the Indemnity Agreement, the Special Indemnity Agreement and the UCC financing statements required to be executed and delivered in connection with the foregoing, collectively.



"Oral Licensee" shall have the meaning specified in Section 20.01(n)(xiv) of the Lease.

"Overall Transaction" shall mean all the transactions and activities referred to in or contemplated by the Operative Documents.

"Participant" shall mean shall mean Lessor, any Holder, Agent, Servicer, any trustee under a Mortgage which is a deed of trust, the Proceeds Trustee, Head Lessor, each of their assignees or other transferees and each of their Affiliates and their respective officers, directors, employees, shareholders, members or other equity owners.

"Permits" shall mean as to the Property all licenses, authorizations, certificates, variances, concessions, grants, registrations, consents, permits and other approvals issued by a Governmental Authority now or hereafter pertaining to the ownership, management, occupancy, use or operation of such Property, including certificates of occupancy.

"Permitted Encumbrances" shall mean the easements, rights of way, reservations, servitudes and rights of others against the Property which are listed in the Title Policy issued to the Lessor or the Agent (as applicable).

"Permitted Investments" shall mean any one or more of the following obligations or securities having (a) a predetermined fixed dollar of principal due at maturity that cannot vary or change, (b) bearing interest that may either be fixed or variable but which is tied to a single interest rate index plus a single fixed rate spread (if any) and move proportionately with that index, and (c) having the required ratings, if any, provided for in this definition:

(i) investments in direct obligations of the United States of America or any agency thereof having maturities of less than one year;

(ii) investments in commercial paper maturing within one year from the date of creation thereof of the highest credit rating of a Rating Agency (or, in the case of Standard & Poor's, one of the two highest credit ratings);

(iii) investments in bankers' acceptances, certificates of deposit and commercial money market funds having maturities of less than one year issued by commercial banks in the United States of America having capital and surplus in excess of \$50,000,000;

(iv) repurchase obligations with a term of not more than one year for underlying securities of the types described in clauses (i) and (iii) above entered into with a counterparty whose short-term securities are of the highest credit rating of any NRSRO (or, in the case of Standard & Poor's, one of the two highest credit ratings); and

(v) freely redeemable shares in money market funds which invest solely in securities of the types described in clauses (i), (ii), (iii) and (iv) and rated in the highest rating category by any NRSRO (or, in the case of Standard & Poor's, one of the two highest rating categories).

"Permitted Liens" shall mean:

(a) the respective rights and interests of the parties under the Operative Documents,

(b) Liens for Taxes either not yet due or being contested in good faith and by appropriate proceedings, so long as such proceedings shall not involve any material danger of the sale, forfeiture or loss of any part of the Property, title thereto or any interest therein and are undertaken in accordance with the terms of any documents securing the Indebtedness (including, without limitation, posting of any Notes or other collateral to the extent required by such documents),

(c) materialmen's, mechanics', workers', repairmen's, employees or other like Liens for amounts either not yet due or being contested in good faith and by appropriate proceedings so long as such proceedings shall not involve any material danger of the sale, forfeiture or loss of any part of the Property, title thereto or any interest therein; provided, Lessee agrees that it shall pay, discharge of record or note any such Lien within thirty (30) days after knowledge of the filing thereof,

(d) Liens arising out of judgments or awards with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and either which have been bonded or for the payment of which adequate reserves shall have been provided to Lessor's reasonable satisfaction; provided, that, if the long-term unsecured debt is then rated by either Rating Agency, such debt, shall not be rated Investment Grade, then any such amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000), shall be bonded or discharged by Lessee within thirty (30) days after Lessee's knowledge thereof, and

(e) assignments and subleases that comply with the terms of the Lease,

"Person" shall mean an individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, non-incorporated organization or government or any agency or political subdivision thereof.

"Plan" shall have the meaning specified in Section 8.05(c) of the Lease.

"Proceeds Trustee" shall mean the Servicer or, if a Property affected by a Casualty or a Condemnation shall not at the time in question be encumbered by a Mortgage, a federally insured bank or other financial institution, selected by Lessor and reasonably satisfactory to Lessee.

"Property" shall mean the real property whose parcel or parcels of land are described on Exhibit B to the Lease (the "Land"), together with all buildings, structures and other improvements of every kind situated on the Land (collectively, the "Improvements"), together with all easements, rights and appurtenances relating to the Land or the Improvements, and together with all fixtures, including all components thereof, on and in respect to the

Improvements, including, without limitation, all built-in equipment used in the operation of the Property, together with all replacements, modifications, alterations and additions thereto (collectively, the "Fixtures"); provided, that in no event shall "Property" include Lessee's Equipment and Personalty. As the context requires, Property shall include the Equipment or the right, title and interest of the Lessor in the Property, including the Lessor's leasehold interest in the Equipment.

"Proposed Adjustment" shall have the meaning specified in Section 19.03(c) of the Lease.

"Qualified Appraiser" with respect to the Real Property, means an independent appraiser who shall be a member of The Appraisal Institute (or its successor organization) with not less than ten (10) years' experience appraising properties similar to the Land, Improvements and Fixtures constituting a portion of the Property in the market in which the Property is located.

"Rating Agencies" shall mean Moody's, Standard & Poor's and Fitch IBCA Inc., or at the Lender's election, another NRSRO.

"Real Property" shall mean all real property and other property, if any, subject to the Lease, specifically including the Land, Improvements and Fixtures, but excluding the Equipment.

"Reference Rate" shall mean, with respect to any specified amount: (I) first, a yield shall be computed by using linear interpolation to the Remaining Weighted Average Life (defined below) between the Reference Treasury Yields (defined below) of two maturities, (i) one maturity as close as possible to, but less than or equal to, the Remaining Weighted Average Life of such specified amount and (ii) the other maturity as close as possible to, but greater than, the Remaining Weighted Average Life of such specified amount, provided, that if the Remaining Weighted Average Life is less than or equal to the shortest maturity of the Reference Treasury Yields, the yield shall equal such Reference Treasury Yield or the shortest maturity; (II) such determined yield then being expressed as a monthly equivalent as a decimal, with the result being the applicable Reference Rate. "H.15(519)" means the weekly statistical release designated as such, or any successor publication, of the Board of Governors of the Federal Reserve System, or if such statistical release is no longer published, any publicly available source of similar market data. In the case that the Reference Rate is being used for the determination of a Make-Whole Premium, the date of determination of a Make-Whole Premium is the fifth Business Day preceding the date such amount becomes due and payable. "Remaining Weighted Average Life" with respect to any specified amount shall mean, as applicable to a prepayment date, the number of years obtained by computing the quotient of (A) the Remaining Dollar Years (defined below) by (B) the aggregate principal or other relevant amount of such specified amount then outstanding. The term "Remaining Dollar Years" of such specified amount shall mean the product obtained by multiplying (1) the amount of each then remaining principal payment or other relevant payment amount for such specified amount (including the principal payment at final maturity), by (2) the number of years (rounded to the nearest one-twelfth) which will elapse between such prepayment date and the date

such payment of principal is due. The term "Reference Treasury Yields" shall mean the most recent weekly Average yields of those elements of the Treasury constant maturity series as published in the most recent H.15(519) corresponding to "on the run" United States Treasury securities traded in the public markets at the time of determination; provided, if a determination is being made in connection with any prepayment of the Notes arising from a Lease Event of Default, an additional 50 basis points shall be added thereto.

"Refinancing" shall mean any refinancing of the Indebtedness.

"Refusal Offer" shall have the meaning specified in Section 4.01(a) of the Lease.

"Reimbursement Date" shall have the meaning specified in Section 19.02(c) of the Lease.

"Release" shall mean the release under applicable Environmental Laws or threatened release of any Hazardous Material into or upon or under any land or water or air, or otherwise into the environment, including, without limitation, by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouting, escaping, emptying, placement and the like.

"Remedial Action" means the investigation, clean-up, remediation or removal required by Environmental Law of contamination, environmental degradation or damage caused by, related to or arising from the existence, generation, use, handling, treatment, storage, transportation, disposal, discharge, release (including a continuous release), or emission of Hazardous Material, including, without limitation, investigations, response and remedial actions required under CERCLA, corrective action required under the Resource Conservation and Recovery Act of 1976, as amended, the investigation, removal or closure of any underground storage tanks, and any related soil or groundwater investigation, cleanup remediation or removal, and other investigation, clean-up, removal or remediation required under or necessary to comply with any Environmental Laws.

"Renewal Rent" shall mean the meaning specified in Section 5.01(b) of the Lease.

"Renewal Term" shall have the meaning specified in Section 5.01 of the Lease.

"Rent" shall mean Interim Rent, Base Rent, Renewal Rent and Supplemental Rent, collectively.

"Rent Account" shall have the meaning specified in Section 3.03 of the Lease.

"Rent Commencement Date" shall mean the Closing Date, which shall be the date on which Interim Rent and Head Lease Interim Rent commence under the Lease and Head Lease respectively, unless such day is the first calendar day of a month, in which case, Base Rent and Head Lease Base Rent shall commence under the Lease and the Head Lease respectively.

"Rent Commencement Date" shall mean the Closing Date.

"Rent Payment Date" shall mean the last Business Day of each month during the Lease Term or the Head Lease Term, as the case may be.

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"Required Remedial Action Date" shall have the meaning specified in Section 8.05(c) of the Lease.

"Restoration Fund" shall have the meaning specified in Section 12.04(a) of the Lease.

"Right of First Refusal" shall have the meaning specified in Section 4.01 of the Lease.

"Sale and Purchase Agreement" shall mean the Sale and Purchase Agreement dated as of June 1, 2000 between together with Lessee, as a seller, and Lessor and Head Lessor, as purchaser with respect to the Property and acknowledged and agreed by the Holders.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Self-Insurance Amount" shall have the meaning specified in Section 9.01(b) of the Lease.

"Seller" shall mean Atlantic Financial Group, Ltd., a Texas limited partnership, and Lessee collectively.

"Servicer" shall mean First Union National Bank, a national banking association, any replacement thereof and the successors and assigns of the foregoing.

"Single Purpose Entity" shall mean a Person, other than an individual, which (i) is formed or organized solely for the purpose of holding an ownership interest in the Property (except the portion of the Property constituting Equipment, in which case such Person shall hold a leasehold

estate therein and any other rights, titles or benefits relating to the Equipment arising from or out of the Head Lease or any option thereunder), (ii) does not engage in any business unrelated to the Property, (iii) does not have any assets other than those related to its interest in the Property, receipts therefrom or proceeds therefrom or any indebtedness other than as permitted by the other Operative Documents, (iv) has its own separate books and records and has its own accounts in each case which are separate and apart from the books and records and accounts of any other Person, and (v) at all times has, or in the case of a limited partnership, has a corporate general partner which has, or in the case of a limited liability company, has a corporate manager (or, if the manager of the limited liability company is a partnership, such partnership has a corporate general partner) which has, one independent manager or independent director.

"SNDA Agreement" shall mean the Lease Subordination, Non-Disturbance and Attornment Agreement dated as of June 1, 2000 among the Lessor, Lessee, the Head Lessor and the Agent.

"Special Indemnity Agreement" shall mean that Indemnity Agreement dated as of June 1, 2000 made by Lessee for the benefit of the Head Lessor and acknowledged by the Agent and Holders which provides for the exercise of certain rights and remedies against the Lessee and the Equipment as indemnity claims in the event of a Lease Event of Default.

"Special Purpose Representations and Warranties" shall have the meaning specified in Section 25.01(a) of the Lease.

"Standard & Poor's" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

"Sublease" shall have the meaning given such term in Section 14.01 of the Lease.

"Substitute Property" shall mean a property that is substituted by Lessee pursuant to Article XXIII or Section 12.01 of the Lease for an Affected Property in accordance with Article XXIII of the Lease and that is substituted as collateral by Lessor pursuant to Section 20.07 of the Note Purchase Agreement.

"Supplemental Rent" shall mean the Make-Whole Premium and any and all amounts, liabilities, obligations, late charges and Impositions other than Base Rent which Lessee assumes or agrees or is otherwise obligated to pay under the Lease and the Operative Documents (whether or not designated as Supplemental Rent) to any Person, including Fair Market Sales Value payments, Termination Value payments, and indemnities and damages for breach of any covenants, representations, warranties or agreements.

"Surviving Corporation" shall have the meaning specified in Section 20.03(b) of the Lease.

"Tangible Net Worth" means with respect to any Person, as of any date of determination, the sum of capital stock and additional paid-in capital (net of treasury stock) plus retained earnings or capital surplus, as the case may be (or minus any accumulated deficit), minus intangible assets (including, without limitation, franchises, patents, patent applications, trademarks, branch names, good will and research and development) determined on a consolidated basis and in conformity with GAAP.

"Tax Counsel" shall have the meaning specified in Section 19.02(e) of the Lease.

"Tax Indemnitee" shall mean Lessor, any Holder, Agent, Servicer, any trustee under a Mortgage which is a deed of trust, the Proceeds Trustee, Head Lessor, each of their assignees or other transferees and each of their Affiliates and their respective officers, directors, employees, shareholders, members or other equity owners.

"Tax Party" shall have the meaning specified in Section 19.03(c) of the Lease.

"Taxes" shall mean any and all present and future taxes, including income (gross or net), gross or net receipts, sales, use, value added, franchise, doing business, transfer, capital, property (tangible or intangible), municipal assessments, excise and stamp taxes, levies, imposts, duties, charges, assessments or withholding, together with any penalties, fines or interest thereon or additions thereto (any of the foregoing being referred to herein individually as a "Tax"), imposed by any Governmental Authority. Taxes shall include the costs of any contest or appeal pursued which reduces the Taxes (or attempts to do so) including reasonable attorney's fees and costs incident thereto. Without limiting the foregoing, if at any time during the term of the Lease the methods of taxation prevailing at the execution thereof shall be changed or altered so that in lieu of or as a supplement or addition to or a substitute for the whole or any part of the real estate taxes or assessments now or from time to time, thereafter levied, assessed or imposed by applicable taxing authorities for the finding of governmental services, there shall be imposed (i) a tax, assessment, levy, imposition or charge, wholly or partially

as a capital levy or otherwise, on the rents received from or otherwise attributable to the Property, or (ii) a tax, assessment, levy (including but not limited to any municipal, state or federal levy), imposition or charge measured by or based in whole or in part upon the Property or the Lease or the Head Lease, and imposed on the Lessor under the Lease, the Head Lessor under the Head Lease or any portion thereof, or (iii) a license fee or other fee or tax measured by the rent payable under the Lease or the Head Lease, or (iv) any other tax, assessment, levy, charge, fee or the like payable with respect to the Property, the rents, issues and profits thereof, the Lease, the Head Lease or the rents and charges payable pursuant thereto, then all such taxes, assessment, levies, impositions and/or charges, or the part thereof so measured or based shall be deemed to be Taxes.

"Term" shall mean the Interim Term, the Base Term and any Renewal Term.

"Termination Value" shall mean on the Termination Value Date or the date payment is to be made under Section 12.01 if Lessor rejects Lessee's offer to purchase, as the case may be, (i) during the Base Term, the value listed on Schedule 12.01 to the Lease for such Property as of such date and (ii) during a Renewal Term, the Fair Market Sales Value of such Property as of such date.

"Termination Value Date" shall have the meaning specified in Section 12.01(a) of the Lease and after the expiration of the Base Term shall mean the first day of each month during a Renewal Term.

"Title Insurance Company" shall mean Old Republic National Title Insurance Company.

"Title Policy" shall mean the title insurance policy issued by the Title Insurance Company to Lessor pursuant to the Sale and Purchase Agreement, and to the Agent pursuant to the Note Purchase Agreement on the Closing Date.

"Transfer" shall have the meaning specified in Section 19.02(b) of the Lease.

"UCC" shall mean the Uniform Commercial Code as enacted in the state in which Property is located, or any other applicable Uniform Commercial Code.

"Verifier" shall have the meaning specified in Section 19.02(g) of the Lease.

"Warranties" shall have the meaning specified in Section 6.02 of the Lease.

"Withdrawn Property" shall have the meaning specified in Section 23.01 of the Lease.

Schedule 3.01 - Base Rent Schedule Note: Base Rent is due on the last business day of the month.

Period	Month End Date	Fulton Rent Schedule
Interim	30-Jun-00	\$533,967.60
1	31-Jul-00	\$552,380.28
2	31-Aug-00	\$552,380.28
3	30-Sep-00	\$552,380.28
4	31-Oct-00	\$552,380.28
5	30-Nov-00	\$552,380.28
6	31-Dec-00	\$552,380.28
7	31-Jan-01	\$552,380.28
8	28-Feb-01	\$552,380.28
9	31-Mar-01	\$552,380.28
10	30-Apr-01	\$552,380.28
11	31-May-01	\$552,380.28
12	30-Jun-01	\$552,380.28
13	31-Jul-01	\$552,380.28
14	31-Aug-01	\$552,380.28
15	30-Sep-01	\$552,380.28
16	31-Oct-01	\$552,380.28
17	30-Nov-01	\$552,380.28
18	31-Dec-01	\$552,380.28
19	31-Jan-02	\$552,380.28
20	28-Feb-02	\$552,380.28
21	31-Mar-02	\$552,380.28
22	30-Apr-02	\$552,380.28
23	31-May-02	\$552,380.28
24	30-Jun-02	\$552,380.28
25	31-Jul-02	\$552,380.28
26	31-Aug-02	\$552,380.28
27	30-Sep-02	\$552,380.28
28	31-Oct-02	\$552,380.28
29	30-Nov-02	\$552,380.28
30	31-Dec-02	\$552,380.28
31	31-Jan-03	\$552,380.28
32	28-Feb-03	\$552,380.28
33	31-Mar-03	\$552,380.28
34	30-Apr-03	\$552,380.28
35	31-May-03	\$552,380.28
36	30-Jun-03	\$552,380.28
37	31-Jul-03	\$552,380.28
38	31-Aug-03	\$552,380.28
39	30-Sep-03	\$552,380.28



Schedule 3.01 - Base Rent Schedule Note: Base Rent is due on the last business day of the month.

Period	Month End Date	Fulton Rent Schedule
40	31-Oct-03	\$552,380.28
41	30-Nov-03	\$552,380.28
42	31-Dec-03	\$552,380.28
43	31-Jan-04	\$552,380.28
44	28-Feb-04	\$552,380.28
45	31-Mar-04	\$552,380.28
46	30-Apr-04	\$552,380.28
47	31-May-04	\$552,380.28
48	31-Jun-04	\$552,380.28
49	31-Jul-04	\$552,380.28
50	31-Aug-04	\$552,380.28
51	30-Sep-04	\$552,380.28
52	31-Oct-04	\$552,380.28
53	30-Nov-04	\$552,380.28
54	31-Dec-04	\$552,380.28
55	31-Jan-05	\$552,380.28
56	28-Feb-05	\$552,380.28
57	31-Mar-05	\$552,380.28
58	30-Apr-05	\$552,380.28
59	31-May-05	\$552,380.28
60	30-Jun-05	\$552,380.28
61	31-Jul-05	\$552,380.28
62	31-Aug-05	\$552,380.28
63	30-Sep-05	\$552,380.28
64	31-Oct-05	\$552,380.28
65	30-Nov-05	\$552,380.28
66	31-Dec-05	\$552,380.28
67	31-Jan-06	\$552,380.28
68	28-Feb-06	\$552,380.28
69	31-Mar-06	\$552,380.28
70	30-Apr-06	\$552,380.28
71	31-May-06	\$552,380.28
72	30-Jun-06	\$552,380.28
73	31-Jul-06	\$552,380.28
74	31-Aug-06	\$552,380.28
75	30-Sep-06	\$552,380.28
76	31-Oct-06	\$552,380.28
77	30-Nov-06	\$552,380.28
78	31-Dec-06	\$552,380.28
79	31-Jan-07	\$552,380.28

Schedule 3.01 - Base Rent Schedule Note: Base Rent is due on the last business day of the month.

Period	Month End Date	Fulton Rent Schedule
80	28-Feb-07	\$552,380.28
81	31-Mar-07	\$552,380.28
82	30-Apr-07	\$552,380.28
83	31-May-07	\$552,380.28
84	30-Jun-07	\$552,380.28
85	31-Jul-07	\$450,067.49
86	31-Aug-07	\$450,067.49
87	30-Sep-07	\$450,067.49
88	31-Oct-07	\$450,067.49
89	30-Nov-07	\$450,067.49
90	31-Dec-07	\$450,067.49
91	31-Jan-08	\$450,067.49
92	29-Feb-08	\$450,067.49
93	31-Mar-08	\$450,067.49
94	30-Apr-08	\$450,067.49
95	31-May-08	\$450,067.49
96	30-Jun-08	\$450,067.49
97	31-Jul-08	\$450,067.49
98	31-Aug-08	\$450,067.49
99	30-Sep-08	\$450,067.49
100	31-Oct-08	\$450,067.49
101	30-Nov-08	\$450,067.49
102	31-Dec-08	\$450,067.49
103	31-Jan-09	\$450,067.49
104	28-Feb-09	\$450,067.49
105	31-Mar-09	\$450,067.49
106	30-Apr-09	\$450,067.49
107	31-May-09	\$450,067.49
108	30-Jun-09	\$450,067.49
109	31-Jul-09	\$344,693.41
110	31-Aug-09	\$344,693.41
111	30-Sep-09	\$344,693.41
112	31-Oct-09	\$344,693.41
113	30-Nov-09	\$344,693.41
114	31-Dec-09	\$344,693.41
115	31-Jan-10	\$344,693.41
116	28-Feb-10	\$344,693.41
117	31-Mar-10	\$344,693.41
118	30-Apr-10	\$344,693.41
119	31-May-10	\$344,693.41

Schedule 3.01 - Base Rent Schedule Note: Base Rent is due on the last business day of the month.

Period	Month End Date	Fulton Rent Schedule
120	30-Jun-10	\$344,693.41
121	31-Jul-10	\$344,693.41
122	31-Aug-10	\$344,693.41
123	30-Sep-10	\$344,693.41
124	31-Oct-10	\$344,693.41
125	30-Nov-10	\$344,693.41
126	31-Dec-10	\$344,693.41
127	31-Jan-11	\$344,693.41
128	28-Feb-11	\$344,693.41
129	31-Mar-11	\$344,693.41
130	30-Apr-11	\$344,693.41
131	31-May-11	\$344,693.41
132	30-Jun-11	\$344,693.41
133	31-Jul-11	\$344,693.41
134	31-Aug-11	\$344,693.41
135	30-Sep-11	\$344,693.41
136	31-Oct-11	\$344,693.41
137	30-Nov-11	\$344,693.41
138	31-Dec-11	\$344,693.41
139	31-Jan-12	\$344,693.41
140	28-Feb-12	\$344,693.41
141	31-Mar-12	\$344,693.41
142	30-Apr-12	\$344,693.41
143	31-May-12	\$344,693.41
144	30-Jun-12	\$344,693.41
145	31-Jul-12	\$344,693.41
146	31-Aug-12	\$344,693.41
147	30-Sep-12	\$344,693.41
148	31-Oct-12	\$344,693.41
149	30-Nov-12	\$344,693.41
150	31-Dec-12	\$344,693.41
151	31-Jan-13	\$344,693.41
152	28-Feb-13	\$344,693.41
153	31-Mar-13	\$344,693.41
154	30-Apr-13	\$344,693.41
155	31-May-13	\$344,693.41
156	30-Jun-13	\$344,693.41
157	31-Jul-13	\$344,693.41
158	31-Aug-13	\$344,693.41
159	30-Sep-13	\$344,693.41

Schedule 3.01 - Base Rent Schedule Note: Base Rent is due on the last business day of the month.

Period	Month End Date	Fulton Rent Schedule
160	31-Oct-13	\$344,693.41
161	30-Nov-13	\$344,693.41
162	31-Dec-13	\$344,693.41
163	31-Jan-14	\$344,693.41
164	28-Feb-14	\$344,693.41
165	31-Mar-14	\$344,693.41
166	30-Apr-14	\$344,693.41
167	31-May-14	\$344,693.41
168	30-Jun-14	\$344,693.41
169	31-Jul-14	\$344,693.41
170	31-Aug-14	\$344,693.41
171	30-Sep-14	\$344,693.41
172	31-Oct-14	\$344,693.41
173	30-Nov-14	\$344,693.41
174	31-Dec-14	\$344,693.41
175	31-Jan-15	\$344,693.41
176	28-Feb-15	\$344,693.41
177	31-Mar-15	\$344,693.41
178	30-Apr-15	\$344,693.41
179	31-May-15	\$344,693.41
180	30-Jun-15	\$344,693.41
181	31-Jul-15	\$344,693.41
182	31-Aug-15	\$344,693.41
183	30-Sep-15	\$344,693.41
184	31-Oct-15	\$344,693.41
185	30-Nov-15	\$344,693.41
186	31-Dec-15	\$344,693.41
187	31-Jan-16	\$344,693.41
188	28-Feb-16	\$344,693.41
189	31-Mar-16	\$344,693.41
190	30-Apr-16	\$344,693.41
191	31-May-16	\$344,693.41
192	30-Jun-16	\$344,693.41
193	31-Jul-16	\$344,693.41
194	31-Aug-16	\$344,693.41
195	30-Sep-16	\$344,693.41
196	31-Oct-16	\$344,693.41
197	30-Nov-16	\$344,693.41
198	31-Dec-16	\$344,693.41
199	31-Jan-16	\$344,693.41

Schedule 3.01 - Base Rent Schedule Note: Base Rent is due on the last business day of the month.

Period	Month End Date	Fulton Rent Schedule
200	28-Feb-17	\$344,693.41
201	31-Mar-17	\$344,693.41
202	30-Apr-17	\$344,693.41
203	31-May-17	\$344,693.41
204	30-Jun-17	\$344,693.41
205	31-Jul-17	\$344,693.41
206	31-Aug-17	\$344,693.41
207	30-Sep-17	\$344,693.41
208	31-Oct-17	\$344,693.41
209	30-Nov-17	\$344,693.41
210	31-Dec-17	\$344,693.41
211	31-Jan-18	\$344,693.41
212	28-Feb-18	\$344,693.41
213	31-Mar-18	\$344,693.41
214	30-Apr-18	\$344,693.41
215	31-May-18	\$344,693.41
216	30-Jun-18	\$344,693.41
217	31-Jul-18	\$344,693.41
218	31-Aug-18	\$344,693.41
219	30-Sep-18	\$344,693.41
220	31-Oct-18	\$344,693.41
221	30-Nov-18	\$344,693.41
222	31-Dec-18	\$344,693.41
223	31-Jan-19	\$344,693.41
224	28-Feb-19	\$344,693.41
225	31-Mar-19	\$344,693.41
226	30-Apr-19	\$344,693.41
227	31-May-19	\$344,693.41
228	30-Jun-19	\$344,693.41
229	31-Jul-19	\$344,693.41
230	31-Aug-19	\$344,693.41
231	30-Sep-19	\$344,693.41
232	31-Oct-19	\$344,693.41
233	30-Nov-19	\$344,693.41
234	31-Dec-19	\$344,693.41
235	31-Jan-20	\$344,693.41
236	28-Feb-20	\$344,693.41
237	31-Mar-20	\$344,693.41
238	30-Apr-20	\$344,693.41
239	31-May-20	\$344,693.41

Schedule 3.01 - Base Rent Schedule Note: Base Rent is due on the last business day of the month.

Period	Month End Date	Fulton Rent Schedule
240	30-Jun-20	\$344,693.41
241	31-Jul-20	\$344,693.41
242	31-Aug-20	\$344,693.41
243	30-Sep-20	\$344,693.41
244	31-Oct-20	\$344,693.41
245	30-Nov-20	\$344,693.41
246	31-Dec-20	\$344,693.41
247	31-Jan-21	\$344,693.41
248	28-Feb-21	\$344,693.41
249	31-Mar-21	\$344,693.41
250	30-Apr-21	\$344,693.41
251	31-May-21	\$344,693.41
252	30-Jun-21	\$344,693.41
253	31-Jul-21	\$344,693.41
254	31-Aug-21	\$344,693.41
255	30-Sep-21	\$344,693.41
256	31-Oct-21	\$344,693.41
257	30-Nov-21	\$344,693.41
258	31-Dec-21	\$344,693.41
259	31-Jan-22	\$344,693.41
260	28-Feb-22	\$344,693.41
261	31-Mar-22	\$344,693.41
262	30-Apr-22	\$344,693.41
263	31-May-22	\$344,693.41
264	30-Jun-22	\$344,693.41

### **Fulton, MO Property:**

- (i) Obtain any and all national pollutant discharge elimination system permits for stormwater discharges at or from the Premises required under applicable Environmental Laws;
- (ii) Install in accordance with accepted best management practices, secondary containment structures around any waste oil drums stored outside at the Premises now or in the future, and install appropriate covering over any such drums and associated secondary containment area.

### **Schedule 8.05(e)**

#### **Fulton, MO Property:**

None.

#### Schedule 9.01(a) Insurance Coverage Property

- o All risk, extended coverage.
- o Ordinance or law coverage and boiler and machinery, if applicable.
- o Replacement cost basis, with an agreed value equal to full insurable replacement value of the Improvements, Fixtures, and Equipment.
- o Agent named as loss employee.
- o Lessor may require, based on reasonable good faith opinion, on annual basis that Lessee pays costs of any appraisal for Lessor's determination.

#### **Commercial General Liability**

- o Coverage of all claims arising out of Lessee's or any third party's use and occupancy of Property (including any sublease) and which are customarily covered under standard CGL policy.
- o Combined single limit of \$1,000,000.00 per occurrence; aggregate limit of \$10,000,000.00; excess umbrella liability insurance of at least \$20,000,000.00; aggregate limit per location of \$20,000,000.00.
- o Lessor may require, based on reasonable good faith opinion, on annual basis that Lessee increase amount.
- o Limits on amounts shall not limit liability of Lessee under the Lease.

#### **Worker's Compensation**

- o As per applicable statute.

#### **Employer's Liability**

- o Limit per employee of at least \$100,000.00; \$500,000.00 per occurrence.

#### **Builder's Risk**

- o All risk, extended coverage for any period of construction at the Property if not otherwise insured by property insurance policy.
- o For value of alterations and/or additions.

#### **Flood**

- o If Property is in special flood hazard zone, in highest amount available.
- o If Property is not in special flood hazard zone, in amount of at least \$250,000.00.
- o Notwithstanding the above, Lessee shall comply with Section 9.01(f) of Lease. Earthquake

o If Property is in earthquake zone, in amount greater of (x) amount sufficient to prevent Lessor and Lessee from becoming coinsurers of any loss or (y) 100% of replacement value; deductible must be reasonably acceptable to Lessor; replacement cost endorsement to be included.

o If Property is not in earthquake zone, in the amount of \$250,000.00.

**Other Insurance**

o Lessor may, from time to time, reasonably require other insurance so long as such other insurance is customarily required to be carried on similar properties in the industry and similar geographic region.

**Insurance Companies**

o Any insurance shall be provided by one or more insurers (x) with a claims paying rating of at least A by S&P or the equivalent rating by Moody's and

(y) a general policy rating of at least A and financial class of at least XI by A.M. Best Company, Inc. If an insurer shall fail to meet such requirements, Lessee shall have 60 days to replace such insurer with meeting the above requirements.



**Endorsements**

- o Lessor, Agent, Holders and Head Lessor named as additional insureds under liability policies required under the Lease.
- o Each policy shall be primary without right of contribution.
- o Insurer shall waive all rights of subrogation against Lessor, Agent, Holders and Head Lessor, unless such parties have caused the loss/liability by gross negligence or willful misconduct.
- o With respect to additional insureds and additional loss payees, a policy shall operate and be so construed as if a separate policy.
- o Insurer, upon cancellation or non-renewal, must give 30 day written notice to Lessor, Agent, Holders and Head Lessor.
- o Lessor, Agent, Holders and Head Lessor shall not be liable for any premiums or assessments.
- o No act or omission, whether or not negligent, of Lessee or any Indemnitee shall affect enforceability or validity of any policy with respect to any other Indemnitee.
- o So long as no Lease Event of Default shall exist, Lessee shall, at Lessee's own cost and expense, adjust all losses.

**Adjustment**

- o So long as no Lease Event of Default shall exist, Lessee shall, at Lessee's own cost and expense, adjust all losses.

**Self-Insurance**

- o Deductible is \$500,000.00 for Property and \$1,000,000.00 for Commercial General Liability.
- o So long as requirements for self-insurance are satisfied, there will be no limit on amounts of self-insurance.

**Schedule 12.01 - Termination Values**

Note: Termination Value equals Termination Value % times the Purchase Price of the Real Estate and the Equipment, which totaled \$57,479,747.

Period	Month End Date	Fulton Lease Termination %	Fulton Lease Termination Value (Dollar Value)
Interim	30-Jun-00	104.000%	\$59,778,936.88
1	31-Jul-00	104.000%	\$59,778,936.88
2	31-Aug-00	103.814%	\$59,672,024.56
3	30-Sep-00	103.628%	\$59,565,112.23
4	31-Oct-00	103.442%	\$59,458,199.90
5	30-Nov-00	103.255%	\$59,350,712.77
6	31-Dec-00	103.069%	\$59,243,800.44
7	31-Jan-01	102.883%	\$59,136,888.11
8	28-Feb-01	102.696%	\$59,029,400.98
9	31-Mar-01	102.510%	\$58,922,488.65
10	30-Apr-01	102.324%	\$58,815,576.33
11	31-May-01	102.137%	\$58,708,089.20
12	30-Jun-01	101.951%	\$58,601,176.87
13	31-Jul-01	101.765%	\$58,494,264.54
14	31-Aug-01	101.578%	\$58,386,777.41
15	30-Sep-01	101.392%	\$58,279,865.08
16	31-Oct-01	101.206%	\$58,172,952.75
17	30-Nov-01	101.020%	\$58,066,040.42
18	31-Dec-01	100.833%	\$57,958,553.30
19	31-Jan-02	100.647%	\$57,851,640.97
20	28-Feb-02	100.461%	\$57,744,728.64
21	31-Mar-02	100.274%	\$57,637,241.51
22	30-Apr-02	100.088%	\$57,530,329.18
23	31-May-02	99.902%	\$57,423,416.85
24	30-Jun-02	99.715%	\$57,315,929.73
25	31-Jul-02	99.529%	\$57,209,017.40
26	31-Aug-02	99.343%	\$57,102,105.07
27	30-Sep-02	99.156%	\$56,994,617.94
28	31-Oct-02	98.970%	\$56,887,705.61
29	30-Nov-02	98.784%	\$56,780,793.28
30	31-Dec-02	98.597%	\$56,673,306.15
31	31-Jan-03	98.411%	\$56,566,393.83
32	28-Feb-03	98.225%	\$56,459,481.50
33	31-Mar-03	98.039%	\$56,352,569.17
34	30-Apr-03	97.852%	\$56,245,082.04
35	31-May-03	97.666%	\$56,138,169.71
36	30-Jun-03	97.480%	\$56,031,257.38
37	31-Jul-03	97.293%	\$55,923,770.25

Period	Month End Date	Fulton Lease Termination %	Fulton Lease Termination Value (Dollar Value)
38	31-Aug-03	97.107%	\$55,816,857.92
39	30-Sep-03	96.921%	\$55,709,945.59
40	31-Oct-03	96.734%	\$55,602,458.47
41	30-Nov-03	96.548%	\$55,495,546.14
42	31-Dec-03	96.362%	\$55,388,633.81
43	31-Jan-04	96.175%	\$55,281,146.68
44	29-Feb-04	95.959%	\$55,174,234.35
45	31-Mar-04	95.803%	\$55,067,322.02
46	30-Apr-04	95.616%	\$54,959,834.90
47	31-May-04	95.430%	\$54,852,922.57
48	30-Jun-04	95.244%	\$54,746,010.24
49	31-Jul-04	95.058%	\$54,639,097.91
50	31-Aug-04	94.871%	\$54,531,610.78
51	30-Sep-04	94.685%	\$54,424,698.45
52	31-Oct-04	94.499%	\$54,317,786.12
53	30-Nov-04	94.312%	\$54,210,299.00
54	31-Dec-04	94.126%	\$54,103,386.67
55	31-Jan-05	93.940%	\$53,996,474.34
56	29-Feb-05	93.753%	\$53,888,987.21
57	31-Mar-05	93.567%	\$53,782,074.88
58	30-Apr-05	93.381%	\$53,675,162.55
59	31-May-05	93.194%	\$53,567,675.42
60	30-Jun-05	93.008%	\$53,460,763.09
61	31-Jul-05	92.822%	\$53,353,850.77
62	31-Aug-05	92.635%	\$53,246,363.64
63	30-Sep-05	92.449%	\$53,139,451.31
64	31-Oct-05	92.263%	\$53,032,538.98
65	30-Nov-05	92.077%	\$52,925,626.65
66	31-Dec-05	91.890%	\$52,818,139.52
67	31-Jan-06	91.704%	\$52,711,227.19
68	29-Feb-06	91.518%	\$52,604,314.86
69	31-Mar-06	91.331%	\$52,496,827.74
70	30-Apr-06	91.145%	\$52,389,915.41
71	31-May-06	90.959%	\$52,283,003.08
72	30-Jun-06	90.772%	\$52,175,515.95
73	31-Jul-06	90.586%	\$52,068,603.62
74	31-Aug-06	90.400%	\$51,961,691.29
75	30-Sep-06	90.213%	\$51,854,204.17
76	31-Oct-06	90.027%	\$51,747,291.84
77	30-Nov-06	89.841%	\$51,640,379.51
78	31-Dec-06	89.654%	\$51,532,892.38
79	31-Jan-07	89.468%	\$51,425,980.05

Period	Month End Date	Fulton Lease Termination %	Fulton Lease Termination Value ( Dollar Value)
80	28-Feb-07	89.282%	\$51,319,067.72
81	31-Mar-07	89.096%	\$51,212,155.39
82	30-Apr-07	88.909%	\$51,104,668.27
83	31-May-07	88.723%	\$50,997,755.94
84	30-Jun-07	88.537%	\$50,890,843.61
85	31-Jul-07	88.350%	\$50,783,356.48
86	31-Aug-07	88.164%	\$50,676,444.15
87	30-Sep-07	87.978%	\$50,569,531.82
88	31-Oct-07	87.791%	\$50,462,044.69
89	30-Nov-07	87.605%	\$50,355,132.36
90	31-Dec-07	87.419%	\$50,248,220.03
91	31-Jan-08	87.232%	\$50,140,732.91
92	28-Feb-08	87.046%	\$50,033,820.58
93	31-Mar-08	86.860%	\$49,926,908.25
94	30-Apr-08	86.674%	\$49,819,995.92
95	31-May-08	86.487%	\$49,712,508.79
96	30-Jun-08	86.301%	\$49,605,596.46
97	31-Jul-08	86.115%	\$49,498,684.13
98	31-Aug-08	85.928%	\$49,391,197.01
99	30-Sep-08	85.742%	\$49,284,284.68
100	31-Oct-08	85.556%	\$49,177,372.35
101	30-Nov-08	85.369%	\$49,069,885.22
102	31-Dec-08	85.183%	\$48,962,972.89
103	31-Jan-09	84.997%	\$48,856,060.56
104	28-Feb-09	84.810%	\$48,748,573.44
105	31-Mar-09	84.624%	\$48,641,661.11
106	30-Apr-09	84.438%	\$48,534,748.78
107	31-May-09	84.251%	\$48,427,261.65
108	30-Jun-09	84.065%	\$48,320,349.32
109	31-Jul-09	83.879%	\$48,213,436.99
110	31-Aug-09	83.693%	\$48,106,524.66
111	30-Sep-09	83.506%	\$47,999,037.53
112	31-Oct-09	83.320%	\$47,892,125.21
113	30-Nov-09	83.134%	\$47,785,212.88
114	31-Dec-09	82.947%	\$47,677,725.75
115	31-Jan-10	82.761%	\$47,570,813.42
116	28-Feb-10	82.575%	\$47,463,901.09
117	31-Mar-10	82.388%	\$47,356,413.96
118	30-Apr-10	82.202%	\$47,249,501.63
119	31-May-10	82.016%	\$47,142,589.30
120	30-Jun-10	81.829%	\$47,035,102.18
121	31-Jul-10	81.643%	\$46,928,189.85

Period	Month End Date	Fulton Lease Termination %	Fulton Lease Termination Value (Dollar Value)
122	31-Aug-10	81.457%	\$46,821,277.52
123	30-Sep-10	81.270%	\$46,713,790.39
124	31-Oct-10	81.084%	\$46,606,878.06
125	30-Nov-10	80.898%	\$46,499,965.73
126	31-Dec-10	80.712%	\$46,393,053.40
127	31-Jan-11	80.525%	\$46,285,566.28
128	28-Feb-11	80.339%	\$46,178,653.95
129	31-Mar-11	80.153%	\$46,071,741.62
130	30-Apr-11	79.966%	\$45,964,254.49
131	31-May-11	79.780%	\$45,857,342.16
132	30-Jun-11	79.594%	\$45,750,429.83
133	31-Jul-11	79.407%	\$45,642,942.71
134	31-Aug-11	79.221%	\$45,536,030.38
135	30-Sep-11	79.035%	\$45,429,118.05
136	31-Oct-11	78.848%	\$45,321,630.92
137	30-Nov-11	78.662%	\$45,214,718.59
138	31-Dec-11	78.476%	\$45,107,806.26
139	31-Jan-12	78.289%	\$45,000,319.13
140	28-Feb-12	78.103%	\$44,893,406.80
141	31-Mar-12	77.917%	\$44,786,494.47
142	30-Apr-12	77.731%	\$44,679,582.15
143	31-May-12	77.544%	\$44,572,095.02
144	30-Jun-12	77.358%	\$44,465,182.69
145	31-Jul-12	77.172%	\$44,358,270.36
146	31-Aug-12	76.985%	\$44,250,783.23
147	30-Sep-12	76.799%	\$44,143,870.90
148	31-Oct-12	76.613%	\$44,036,958.57
149	30-Nov-12	76.426%	\$43,929,471.45
150	31-Dec-12	76.240%	\$43,822,559.12
151	31-Jan-13	76.054%	\$43,715,646.79
152	28-Feb-13	75.867%	\$43,608,159.66
153	31-Mar-13	75.681%	\$43,501,247.33
154	30-Apr-13	75.495%	\$43,394,335.00
155	31-May-13	75.308%	\$43,286,847.88
156	30-Jun-1	75.122%	\$43,179,935.55
157	31-Jul-13	74.936%	\$43,073,023.22
158	31-Aug-13	74.750%	\$42,966,110.89
159	30-Sep-13	74.563%	\$42,858,623.76
160	31-Oct-13	74.377%	\$42,751,711.43
161	30-Nov-13	74.191%	\$42,644,799.10
162	31-Dec-13	74.004%	\$42,537,311.97
163	31-Jan-14	73.818%	\$42,430,399.65

Period	Month End Date	Fulton Lease Termination %	Fulton Lease Termination Value (Dollar Value)
164	28-Feb-14	73.632%	\$42,323,487.32
165	31-Mar-14	73.445%	\$42,216,000.19
166	30-Apr-14	73.259%	\$42,109,087.86
167	31-May-14	73.073%	\$42,002,175.53
168	30-Jun-14	72.886%	\$41,894,688.40
169	31-Jul-14	72.700%	\$41,787,776.07
170	31-Aug-14	72.514%	\$41,680,863.74
171	30-Sep-14	72.327%	\$41,573,376.62
172	31-Oct-14	72.141%	\$41,466,464.29
173	30-Nov-14	71.955%	\$41,359,551.96
174	31-Dec-14	71.769%	\$41,252,639.63
175	31-Jan-15	71.582%	\$41,145,152.50
176	28-Feb-15	71.396%	\$41,038,240.17
177	31-Mar-15	71.210%	\$40,931,327.84
178	30-Apr-15	71.023%	\$40,823,840.72
179	31-May-15	70.837%	\$40,716,928.39
180	30-Jun-15	70.651%	\$40,610,016.06
181	31-Jul-15	70.464%	\$40,502,528.93
182	31-Aug-15	70.278%	\$40,395,616.39
183	30-Sep-15	70.092%	\$40,288,704.27
184	31-Oct-15	69.905%	\$40,181,217.15
185	30-Nov-15	69.719%	\$40,074,304.82
186	31-Dec-15	69.533%	\$39,967,392.49
187	31-Jan-16	69.347%	\$39,860,480.16
188	28-Feb-16	69.160%	\$39,752,933.03
189	31-Mar-16	68.974%	\$39,646,080.70
190	30-Apr-16	68.788%	\$39,539,168.37
191	31-May-16	68.601%	\$39,431,681.24
192	30-Jun-16	68.415%	\$39,324,768.92
193	31-Jul-16	68.229%	\$39,217,856.59
194	31-Aug-16	68.042%	\$39,110,369.46
195	30-Sep-16	67.856%	\$39,003,457.13
196	31-Oct-16	67.670%	\$38,896,544.80
197	30-Nov-16	67.483%	\$38,789,057.67
198	31-Dec-16	67.297%	\$38,682,145.34
199	31-Jan-17	67.111%	\$38,575,233.01
200	28-Feb-17	66.924%	\$38,467,745.89
201	31-Mar-17	66.738%	\$38,360,833.56
202	30-Apr-17	66.552%	\$38,253,921.23
203	31-May-17	66.366%	\$38,147,008.90
204	30-Jun-17	66.179%	\$38,039,521.77
205	31-Jul-17	65.993%	\$37,932,609.44

Period	Month End Date	Fulton Lease Termination %	Fulton Lease Termination Value (Dollar Value)
206	31-Aug-17	65.807%	\$37,825,697.11
207	30-Sep-17	65.620%	\$37,718,209.99
208	31-Oct-17	65.434%	\$37,611,297.66
209	30-Nov-17	65.248%	\$37,504,385.33
210	31-Dec-17	65.061%	\$37,396,898.20
211	31-Jan-18	64.875%	\$37,289,985.87
212	28-Feb-18	64.689%	\$37,183,073.54
213	31-Mar-18	64.502%	\$37,075,586.41
214	30-Apr-18	64.316%	\$36,968,674.09
215	31-May-18	64.130%	\$36,861,761.76
216	30-Jun-18	63.943%	\$36,754,274.63
217	31-Jul-18	63.757%	\$36,647,362.30
218	31-Aug-18	63.571%	\$36,540,449.97
219	30-Sep-18	63.385%	\$36,433,537.64
220	31-Oct-18	63.198%	\$36,326,050.51
221	30-Nov-18	63.012%	\$36,219,138.18
222	31-Dec-18	62.826%	\$36,112,225.86
223	31-Jan-19	62.639%	\$36,004,738.73
224	28-Feb-19	62.453%	\$35,897,826.40
225	31-Mar-19	62.267%	\$35,790,914.07
226	30-Apr-19	62.080%	\$35,683,426.94
227	31-May-19	61.894%	\$35,576,514.61
228	30-Jun-19	61.708%	\$35,469,602.28
229	31-Jul-19	61.521%	\$35,362,115.16
230	31-Aug-19	61.335%	\$35,255,202.83
231	30-Sep-19	61.149%	\$35,148,290.50
232	31-Oct-19	60.962%	\$35,040,803.37
233	30-Nov-19	60.776%	\$34,933,891.04
234	31-Dec-19	60.590%	\$34,826,978.71
235	31-Jan-20	60.404%	\$34,720,066.38
236	28-Feb-20	60.217%	\$34,612,579.26
237	31-Mar-20	60.031%	\$34,505,666.93
238	30-Apr-20	59.845%	\$34,398,754.60
239	31-May-20	59.658%	\$34,291,267.47
240	30-Jun-20	59.472%	\$34,184,355.14
241	31-Jul-20	59.286%	\$34,077,442.81
242	31-Aug-20	59.099%	\$33,969,955.68
243	30-Sep-20	58.913%	\$33,863,043.36
244	31-Oct-20	58.727%	\$33,756,131.03
245	30-Nov-20	58.540%	\$33,648,643.90
246	31-Dec-20	58.354%	\$33,541,731.57
247	31-Jan-21	58.168%	\$33,434,819.24

Period	Month End Date	Fulton Lease Termination %	Fulton Lease Termination Value (Dollar Value)
248	28-Feb-21	57.981%	\$33,327,332.11
249	31-Mar-21	57.795%	\$33,220,419.78
250	30-Apr-21	57.609%	\$33,113,507.45
251	31-May-21	57.423%	\$33,006,595.12
252	30-Jun-21	57.236%	\$32,899,108.00
253	31-Jul-21	57.050%	\$32,792,195.67
254	31-Aug-21	56.864%	\$32,685,283.34
255	30-Sep-21	56.677%	\$32,577,796.21
256	31-Oct-21	56.491%	\$32,470,883.88
257	30-Nov-21	56.305%	\$32,363,971.55
258	31-Dec-21	56.118%	\$32,256,484.43
259	31-Jan-22	55.932%	\$32,149,572.10
260	28-Feb-22	55.746%	\$32,042,659.77
261	31-Mar-22	55.559%	\$31,935,172.64
262	30-Apr-22	55.373%	\$31,828,260.31
263	31-May-22	55.187%	\$31,721,347.98
264	30-Jun-22	55.000%	\$31,613,860.85



**Schedule 20.01(g)**

Environmental Matters

Fulton, MO Property:

- (i) Permits: Pursuant to ss. 8.05(d) herein, Lessee shall obtain any and all national pollutant discharge elimination system permits for storm water discharges at or from the Premises required under applicable Environmental Laws;
- (ii) Oil Drums: Pursuant to ss. 8.05(d) herein, Lessee shall install, in accordance with accepted best management practices, secondary containment structures around any waste oil drums stored outside at the Premises now or in the future, and install appropriate covering over any such drums and associated secondary containment area.

### **Schedule 20.01(m) Patent or Trademark Claims**

1. Jean Charles, Inc. - Notice of infringement dated April 26, 2000 at U.S. patent.
2. Lernelson Medical, Education & Research Foundation, L.P. - Notice of infringement dated February 16, 1999 of various U.S. patents.
3. Roman, Inc. - Notice of copyright infringement dated May 14, 1999.
4. Quality Artworks - Notice of copyright infringement dated October 18, 1999. The vendor has assumed nil responsibility far this claim of infringement.
5. Hallmark Cards, Inc. - Notice of copyright infringement dated November 5, 1999. The vendor has assumed all responsibility for this claim of infringement.

**Schedule 20.01(r)**

Lease Agreement  
Material Adverse Litigation

None.

**EXHIBIT A  
TO  
LEASE AGREEMENT**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (as this agreement may be amended, supplemented or otherwise modified from time to time with the terms hereof, this "Agreement") dated as of [ ], 2000, between DOLLAR GENERAL CORPORATION, a corporation organized under the laws of Tennessee ("Transferor"), and [ ], a [ ] organized under the laws of [ ] ("Transferee").

**WITNESSETH:**

WHEREAS, the parties hereto desire to effect (a) the transfer by Transferor to Transferee of the right, title and interest of the Transferor in, under and with respect to that certain Lease Agreement dated as of June 1, 2000 (the "Lease") between Transferor, as Lessee, and FU/DG Fulton, LLC, a Delaware limited liability company, as Lessor, and the proceeds therefrom and (b) the assumption by Transferee of the obligations of Transferor accruing thereunder;

NOW, THEREFORE, it is hereby agreed as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Lease and Appendix A thereto, and the rules of usage set forth therein shall apply hereto.
2. Assignment. Transferor does hereby sell, convey, assign, transfer and set over unto Transferee, as of the date hereof, its right, title and interest in the Lease and any proceeds therefrom, together with all other documents and instruments evidencing such right, title and interest.
3. Assumption. Transferee hereby undertakes, for the benefit of Transferor and its successors and assigns, all of the duties and obligations of Transferor whenever accrued (other than duties and obligations of Transferor required to be performed by it on or prior to the date hereof under the Lease) pursuant to the Lease, and hereby confirms that it shall be deemed a party to the Lease.
4. Obligations of Transferor. Transferor shall not be released from its primary liability as Lessee under the Lease and shall continue to be obligated for all obligations of "Lessee" under the Lease, which obligations shall continue in full force and effect as obligations of a principal and not of a guarantor or surety, as though no assignment had been made and notwithstanding the rejection of the Lease by the Transferee or its successor or assign pursuant to Section 365 of Title 11 of the United States Code, any provision of the Bankruptcy Code, or any similar law relating to bankruptcy, insolvency, reorganization or the rights of creditors.

5. Payments. Transferor hereby covenants and agrees to pay over to Transferee, if and when received following the date hereof, any amounts (including any sums payable as interest in respect thereof) paid to or for the benefit of Transferor that, under Section 2 hereof, belong to Transferee, and Transferee hereby covenants and agrees to pay over to Transferor, if and when received following the date hereof, any amounts (including any sums payable as interest in respect thereof) paid to or for the benefit of Transferee that, under Section 2 hereof, belong to Transferor.

6. Representations and Warranties of Transferee. Transferee represents and warrants to each party to the Lease that:

(a) it has all requisite power and authority and legal right to enter and carry out the transactions contemplated hereby and to carry out and perform the obligations of the Transferor pursuant to the Lease as assumed by the Transferee pursuant hereto;

(b) except for modifications required due to the identity of the Transferee, which modifications are set forth on Schedule 1 hereto, on and as of the date hereof, the representations and warranties of the Transferor set forth in Section 20.01 of the Lease if made by the Transferee are true and correct as to the Transferee;

(c) it is not a tax-exempt entity (within the meaning of Section 168(h) of the Code); and

(d) it is not a debtor or debtor-in-possession in a voluntary or involuntary bankruptcy proceeding as of the date of this Agreement.

(e) it is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation. Transferee has the corporate power and authority to conduct its business as now conducted, to own or hold under lease its property, and Transferee further has the authority to receive the interests of the Transferor under this Agreement. Transferee is duly qualified to do business and is in good standing as a foreign corporation in the jurisdiction in which the Property is located, and it is in good standing as a foreign corporation in each jurisdiction where the failure to so qualify would have a material adverse effect on its ability to perform its obligations under this Agreement.

(f) it has been duly authorized by all necessary corporate action to enter into this Agreement and this Agreement has been duly executed and delivered by Transferee, and the execution, delivery and performance thereof by Transferee will not, (i) require any approval of the stockholders of Transferee or any approval or consent of any trustee or holder of any indebtedness or obligation of Transferee, other than such consents and approvals as have been obtained, (ii) contravene any Applicable Law binding on such Transferee or (iii) contravene or result in any breach of or constitute any default under Transferee's charter or by-law's or other organizational documents, or any indenture, judgment, order, mortgage, loan agreement, contract, partnership or joint venture agreement, lease or other agreement or instrument to which Transferee is a party or by which Transferee is bound, or result in the creation of any Lien (other than pursuant to the Lease) upon any of the property of Transferee.

(g) all Governmental Action and other consents, approvals, waivers, registrations, authorizations and other action required or necessary pursuant to any legal requirement or contract, indenture, instrument or agreement to which Transferee is a party or its property is bound in connection with the execution, delivery and performance by Transferee of this Agreement, has been obtained, given or made.

(h) this Agreement constitutes the legal, valid and binding obligation of Transferee, enforceable against Transferee in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, moratorium, fraudulent conveyance, insolvency, equitable principles or other similar laws affecting the enforcement of creditors' rights in general.

(i) Transferee has not offered any interest in the Property or this Agreement, or any securities of Transferee to, or solicited any offer to acquire any of the same from, any Person, in violation of Section 5 of the Securities Act, nor has it authorized any Person to take any such action, and Transferee has taken no action that would subject any interest in the Property, the Bond, or this Agreement to the registration requirements of Section 5 of the Securities Act. Nothing herein is intended to imply or shall be construed to suggest that the interests in this Agreement constitute securities.

7. Default. Each of Transferor and Transferee represents and warrants for the benefit of the Participants that no Lease Default or Lease Event of Default exists and that the transfer contemplated hereby complies with the provisions of Article XI of the Lease.

8. Reliance. The representations, warranties, covenants and agreements of the Transferee are made for the benefit of, and may be relied upon by the parties to the Lease.

9. Successors and Assigns. This Agreement shall be binding upon the Transferor and its successors and assigns and shall be binding upon and inure to the benefit of the Transferee and its successors and assigns.

10. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State in which the Property is situated.

EACH PARTY HERETO SUBMITS TO NON-EXCLUSIVE PERSONAL JURISDICTION IN THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF NEW YORK (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF SUCH PERSON'S OBLIGATIONS HEREUNDER AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE OBLIGATIONS OWING TO ANY PERSON HEREUNDER. EACH PARTY HERETO HEREBY WAIVES AND AGREES NOT TO ASSERT AS A DEFENSE IN ANY ACTION, SUIT

OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT (A) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE COURTS OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (B) THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR (C) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER. EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATED TO THE ENFORCEMENT OF THIS AGREEMENT.

**THE PARAGRAPH SET FORTH ABOVE SHALL APPLY TO ANY SIGNATORY HERETO AND THE SUCCESSORS AND ASSIGNS OF ANY PARTY OR SIGNATORY HERETO.**

11. Reliance. Each Participant shall be entitled to rely on this Agreement and shall be a third party beneficiary hereof.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**DOLLAR GENERAL CORPORATION,  
as Transferor**

By:

Name:

Title:

[Transferee]

By:

Name:

Title:



A TRACT LOCATED IN THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER or SECDON 7, TOWNSHIP 47 NORTH, RANGE 9 WEST, THE NORTHWEST QUARTER MID THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 47 NORTH, RANGE 9 WEST. ALL IN THE CITY OF FULTON IN CALLAWAY COUNTY, MISSOURI. BEING THE TRACT DESCRIBED BY THE DEED IN 9001 < 342 PAGE 125, BOOK 342 PAGE 364, BOOK 342 PAGE 426, 8001 < 342 PAGE 157, BOOK 342 PAGE 070, BOOK 344 PAGE 546. BOOK 344 PAGE 735 AND PART OF THE TRACT DESCRIBED BY THE DEED IN BOOK 339 PAGE 400. ALL OF THE CALLAWAY COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 8. THENCE WITH THE NORTH LINE OF SAID SECTION 8 AND THE LINES OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 342 PAGE 125, N 86°35'00"E, 745.45 FEET TO THE NORTHEAST CORNER OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 342 PAGE 125. ALSO BEING THE NORTHWEST CORNER OF THE TRACT DESCRIBED BY THE DEED IN BOOK 304 PAGE 276 OR THE CALLAWAY COUNTY RECORDS; THENCE WITH THE EAST LINE OF THE TRACT DESCRIBED BY SAID DEED IN 6001 < 342 PAGE 125 AND BOOK 342 PAGE 157, ALSO BEING THE COMMON LINE OF THE TRACTS DESCRIBED BY THE DEED IN BOOK 304 PAGE 276 AND THE DEED IN BOOK 313 PAGE 522, ALL OF THE CALLAWAY COUNTY RECORDS, S 04° 42' 45"E, 1319.90 FEET TO THE QUARTER SECTION LINE, ALSO BEING THE SOUTHERN CORNER COMMON TO THE TRACTS DESCRIBED BY SAID DEEDS IN BOOK 342 PAGE 157 AND BOOK 342 PAGE 125; THENCE WITH THE EAST LINE OF THE TRACT DESCRIBED BY THE DEED IN BOOK 344 PAGE 735. S 04° 42' 45"E, 40.03 FEET TO A POINT ON THE NORTH LINE OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 339 PAGE 400; THENCE WITH THE LINES OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 339 PAGE 400, N 56°32'45"E, 65.75 FEET TO THE NORTHWEST CORNER OF THE TRACT DESCRIBED BY THE DEED IN BOOK 333 PAGE 382 AND THE SURVEY RECORDED IN BOOK PAGE 115, ALL OF THE CALLAWAY COUNTY RECORDS: THENCE WITH THE WEST LINE OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 333 PAGE 382 AND SAID SURVEY IN BOOK A, 4 PAGE 15, S 04° 22' 00"E, 1285.80 FEET (1272.99 FEET, DEED IN BOOK 333 PAGE 382 AND SAID SURVEY IN BOOK A & PAGE 115) TO THE SOUTHWEST CORNER OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 333 PAGE 382 AND THE SURVEY IN BOOK PAGE 115. ALSO BEING A POINT ON THE QUARTER SECTION LINE AND THE NORTH LINE OF THE TRACT DESCRIBED BY THE DEEDS IN BOOK 136 PAGE 518 AND BOOK 144 PAGE 49, ALL OF THE CALLAWAY COUNTY RECORDS: THENCE WITH SAID QUARTER SECTION LINE AND SAID NORTH LINE. S 85° 15' 45" W, 141.70 FEET: THENCE LEAVING SAID QUARTER SECTION LINE AND SAID NORTH LINE AND WITH THE WEST LINE OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 144 PAGE 49, S 03° 28' 30" E, 991.90 FEET TO THE NORTH LINE OF BROOKSIDE DRIVE AS DESCRIBED BY THE DEED IN BOOK 257 PAGE 650 AND THE SURVEY IN BOOK PAGE 655. ALL OF THE CALLAWAY COUNTY RECORDS: THENCE WITH SAID NORTH LINE, S 58° 55' 00" W, 710.85 FEET (710.76 FEET, DEED IN BOOK 257 PAGE 650 AND SURVEY IN BOOK 1 PAGE 953); THENCE S 53° 58' 30" W, 257.15 FEET (287.09 FEET, DEED IN BOOK 257 PAGE 650 AND SURVEY IN BOOK 1 PAGE 955); THENCE S 20° 14' 00" W, 442.00 FEET (442.32 FEET, DEED IN BOOK 257 PAGE 650 AND SURVEY IN BOOK 1 PAGE 955); THENCE S 05° 19' 15" E, 296.05 FEET THENCE WITH A CURVE TO THE LEFT, 185.00 FEET. CURVE RADIUS 543.24 FEET. CHORD S 18° 04' 30" E, 184.10 FEET TO A POINT ON THE NORTH LINE OF THE ILLINOIS CENTRAL GULF RAILROAD RIGHT-OF-WAY: THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE OR 6. RODKSID DRIVE AND WITH SAID NORTH RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD. ALONG A NON TANGENT CURVE TO THE LEFT. 2.30 FEET. CURVE RADIUS 1435.55 FEET, CHORD S 64° 48' 30" W 2.30 FEET THENCE S 64° 48' 30" W 77.25 FEET: THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE AND CONTINUING WITH THE LINES OF THE TRACT DESCRIBED BY SAID DEED IN BOOK 339 PAGE 400, N 16° 03' 15" W, 123.55 FEET (132.56 FEET DEED IN BOOK 339 PAGE 400); THENCE N 42° 33' 15" W, 66.03 FEET, THENCE N 07° 03' 15" W, 52.80 FEET; THENCE N 48° 33' 15" W, 225.72 FEET: THENCE N 80° 33' 15" W, 97.68 FEET; THENCE S 74° 56' 45" W, 132.66 FEET; THENCE N 36° 03' 15" W, 132.66 FEET: THENCE S 15° 11' 45" W 75.24 FEET; THENCE S 76° 44' 45" W, 369.60 FEET: THENCE S 55° 45' W, 254.10 FEET; THENCE S 89° 26' 45" W, 199.32 FEET; THENCE N 72° 37' 15" W, 172.21 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF U.S. HIGHWAY 54 AS DESCRIBED BY THE DEEDS IN BOOK 211 PAGE 345, BOOK 211 PAGES 252, 260 AND 261, BOOK 208 PAGE 4-43, AND BOOK 344 PAGE 648 ALL OF THE CALLAWAY COUNTY RECORDS; THENCE WITH SAID EAST RIGHT-OF-WAY LINE. BEING THE WEST LINE OF THE TRACT DESCRIBED BY SAID DEEDS IN 6001 < 339 PAGE 400, 2001 < 342 PAGE 364 AND BOOK, 342 PAGE 428. N 5° 07' 00" W, 155.10 FEET; THENCE N 12° 14' 30" W, 201.55 FEET; THENCE N 05° 01' 00" W, 1500.00 FEET; THENCE N 08° 55' 15" E, 103.10 FEET: THENCE N 05° 01' 00" W, 1000.00 FEET: THENCE N 02° 29' 15" E, 34.20 FEET: THENCE N 02° 52' 00" W, 120.00 FEET; THENCE N 15° 25' 00" W, 47.10 FEET: THENCE N 05° 07' 00" W, 300.00 FEET: THENCE N 19° 05' 15" W, 103.10 FEET; THENCE N 05° 07' 00" W, 115.20 FEET: THENCE N 04° 06' 45" W, 194.00 FEET: THENCE WITH A NON TANGENT CURVE TO THE RIGHT, 452.45 FEET. CURVE RADIUS 1784.58 FEET, CHORD N 05° 09' 15" E, 451.25 FEET: THENCE N 26° 53' 15" E, 250.75 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 7, ALSO BEING THE NORTH LINE OF THE TRACT DESCRIBED BY SAID DEEDS IN BOOK 342 PAGE 425 AND BOOK 342 PAGE 125; THENCE LEAVING SAID RIGHT-OF-WAY AND WITH SAID NORTH LINE, N 88° 01' 00" E, 1873.55 FEET TO THE POINT OF BEGINNING AND CONTAINS 265.15 ACRES.

**EXHIBIT C**

**FORM OF  
ESTOPPEL CERTIFICATE**

The undersigned, DOLLAR GENERAL CORPORATION ("Lessee"), a Tennessee corporation, is the Lessee under that certain Lease Agreement (the "Lease") dated June 1, 2000 between the Lessee and FU/DG FULTON, LLC, a Delaware limited liability company, as the Lessor (the "Lessor") of certain real property located in Calloway County, Missouri as described on attached Schedule 1 (the "Description of Property"). With the understanding that the parties listed on Schedule 2 hereto will be and are entitled to rely upon the covenant, representations and statements made herein, Lessee hereby covenants, represents and warrants as follows (terms used herein which are not otherwise defined herein shall have the meaning ascribed to them in the Lease and Appendix A thereto):

1. The Property, which is the subject of the Lease, is described in Schedule I hereto.
2. The Lessee is the owner and holder of all rights, title and interest in the leasehold estate created by the Lease and has no actual knowledge of any Liens thereon other than Permitted Liens.
3. The Lessor does not have any unsatisfied obligations to the Lessee arising under the Lease and, to Lessee's knowledge, no breach on the part of the Lessor exists thereunder. No defense or right of termination, offset, abatement or counterclaim exists with respect to any Rents or other sums payable or to become payable by the Lessee under the Lease.
4. All material permits and a certificate of occupancy, if any, required for the operation of the Property by the Lessee have been obtained, and the Property may be used for the purposes contemplated by the Lease.
5. Attached hereto is a true and correct copy of the Lease and all amendments, if any, thereto: [If no amendments, state "No Amendments".] The Lease is in full force and effect in accordance with such terms and has not been modified, supplemented, canceled or amended in any respect except as stated above.
6. The term of the Lease commenced on \_\_\_\_\_, and continues through \_\_\_\_\_ unless extended as provided in the Lease. Lessee has commenced paying Rent without offset or abatement. The Lessee is obligated to pay Base Rent in such installments and amounts as set forth in Schedule 3.01 to the Lease, which obligation is continuing and is not past due or delinquent in any respect. No installment of Base Rent has been or will be prepaid more than thirty (30) days before it comes due.
7. The Property comprises a warehouse and distribution facility with office space and a truck maintenance facility ancillary thereto or other use consistent with Section 8.01 of the Lease.
8. No event exists which constitutes a Lease Default or Lease Event of Default by the Lessee.
9. The execution and delivery of this Certificate shall in no way expand the rights or obligations of the Lessor and Lessee arising under the Lease.
10. There are no occupants of the Property other than Lessee and the permitted sublessees or users pursuant to the Lease set forth on Schedule 3 hereto. Except as otherwise described on Schedule 3, Lessee has not assigned its rights under the Lease.
11. Such other matters as may be reasonably requested by Lessor, the Agent, any Holder or the Head Lessor.
12. This Certificate shall inure to the benefit of and be binding upon the parties set forth in Schedule 2, and their respective successors and assigns, and to no other person or entities.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered by the undersigned as of [ ]

**LESSEE:**

**DOLLAR GENERAL CORPORATION**  
a Tennessee corporation

By:

Name:

Title:



**Schedule I**

**Description of Property**

**Schedule 2**

**Parties Entitled to Rely**

**Schedule 3**

**Users Pursuant to the Lease**

**EXHIBIT D**  
**REAFFIRMATION AGREEMENT**

THIS REAFFIRMATION AGREEMENT dated as of \_\_\_\_\_ (this "Reaffirmation") is given by Dollar General Corporation, a Tennessee corporation ("Lessee"), pursuant to the requirements of Section 25.01 of that certain Lease Agreement dated as of June 1, 2000 (the "Lease") between FU/DG Fulton, LLC, a Delaware limited liability company, as Lessor (the "Lessor") and Lessee, and is made for the benefit of the Participants with respect to the transfer of Lessor's interests to \_\_\_\_\_ (the "Transferee") pursuant to Article XXV of the Lease. Capitalized terms used herein and not otherwise defined herein shall have the meaning provided in the Lease and Appendix A thereto.

NOW, THEREFORE, Lessee hereby acknowledges and agrees as follows:

SECTION 1. Reaffirmation. Lessee acknowledges the transfer of Lessor's interests to Transferee pursuant to Article XXV of the Lease (the "Transfer") and affirms that, taking into account the Transfer, (i) Lessee remains obligated under the Lease for the payment and performance of each Lessee Obligation and that each Lessee Obligation remains in full force and effect in all respects and is not affected by the Transfer, and (ii) the Lease is in full force and effect in all respects and, to Lessee's knowledge, no Lease Default or Lease Event of Default exists thereunder.

SECTION 2. Governing Law. etc. The provisions of Section 27.07 of the Lease are incorporated herein by reference and are applicable to this Reaffirmation.

SECTION 3. Reliance. Lessee acknowledges and agrees that each Participant shall be entitled to rely on this Reaffirmation.

Transferee hereby acknowledges and agrees as follows:

SECTION 4. Lessee's Estate. Transferee acknowledges the leasehold estate and all other rights of Lessee under the Lease. Transferee shall be obligated and agrees to perform the terms and conditions of the Lease and to assume the Lessor's obligations of the transfers arising under the Lease from and after the date hereof to the same extent and with the same effect as if Transferee were a party thereto.

SECTION 5. Reliance. Transferee acknowledges and agrees that Lessee shall be entitled to rely on this Reaffirmation.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Lessee and Transferee caused this Reaffirmation to be duly executed by its respective officers thereunto duly authorized as of the day and year first above written.

**DOLLAR GENERAL CORPORATION,**  
**as Lessee**

By:

Name:

Title:

---

[as Transferee]

By:

Name:

Title:



June 1, 2000

To: Dollar General Corporation

Re: Rent Account Written Direction for Dollar General Sale-Leaseback

Ladies and Gentlemen:

Pursuant to Section 3.03 of that certain Lease Agreement dated June 1, 2000 (the "Lease"; capitalized terms used but not defined herein shall have the meanings given such terms in the Lease and/or Appendix A thereto) between FU/DG Fulton, LLC., a Delaware limited liability company, as Lessor (the "Lessor"), and Dollar General Corporation, a Tennessee corporation, as Lessee (the "Lessee"), instructions are hereby given with respect to the payment of Rent to the Rent Account.

Lessor, Head Lessor, Holders and the Agent instruct Lessee from this time forward unless otherwise directed by Lessor, Head Lessor, Holders and the Agent to make all payments of Rent in immediately available funds as of the relevant payment date to the account of First Union National Bank solely in its capacity as Servicer, Head Lessor, Holders and the Agent, Account No. 2020000451297. ABA 053000219. Ref: Dollar General (Loan # 37-4000002). Attn: Lisa Traylor, in the manner set forth in Section 3.03 of the Lease.

[Rest of Page Intentionally Left Blank]

Page 2 of 3

**Rent Account Written Direction**

The foregoing written direction relating to the Rent Account is hereby accepted by:

**FIRST UNION NATIONAL BANK,**  
in its capacity as Servicer

*By: /s/ Lisa K. Traylor*

*Name: /s/ Lisa K. Traylor*  
-----

*Title: Vice President*  
-----

Acknowledged and agreed to by:

**WILMINGTON TRUST COMPANY**  
As Agent on behalf of the Holders

By:

Name:

Title:

**FIRST UNION COMMERCIAL  
CORPORATION, as Head Lessor**

By:

Name:

Title:

**FU/DG FULTON. LLC,  
as Lessor**

By:

Name:

Title:

**Rent Account Written Direction**

The foregoing written direction relating to the Rent Account is hereby accepted by:

**FIRST UNION NATIONAL BANK,**  
in its capacity as Servicer

By:

Name:

Title:

Acknowledged and agreed to by:

**WILMINGTON TRUST COMPANY.**  
as Agent on behalf of the Holders

By:

Name: Donald G. MacKlean  
Title: Vice President

**FIRST UNION COMMERCIAL CORPORATION,**  
as Head Lessor

By:

Name:

Title:

**FU/DG FULTON, LLC,**  
as Lessor

By:

Name:

Title:

**Rent Account Written Direction**

The foregoing written direction relating to the Rent ACCQUIZ is hereby accepted by:

**FIRST UNION NATIONAL BANK,**  
in its capacity as Servicer

Acknowledged and agreed to by:

**WILMINGTON TRUST COMPANY,**  
as Agent an behalf of the Holders

By:

Name:

Title:

**FIRST UNION COMMERCIAL CORPORATION,**  
as Head Lessor

By:

Name: LINDA H MINTER  
Title: VICE PRESIDENT

**FU/DG FULTON, LLC.**  
as Lessor

By: /s/ Peter M. Budko

Name: /s/ Peter M. Budko  
-----

Title: SVP and Managing Director  
-----

**Rent Account Written Direction**

**PRINCIPAL LIFE INSURANCE COMPANY,  
as a Holder**

By: /s/ L. S. Valentine

Name: /s/ L. S. Valentine  
-----

Title: Counsel  
-----

By:

Name:  
-----

Title:  
-----

**MONY CAPITAL MANAGEMENT,  
as a Holder**

By:

Name:

Title:

**PAN AMERICAN LIFE INSURANCE COMPANY,  
as a Holder**

By: /s/ Luis Ingles, Jr., C.F.A.

Name: /s/ Luis Ingles, Jr., C.F.A.  
-----

Title: Senior Vice President - Investments  
-----

**FIRST UNION SECURITIES, INC.,  
as a Holder**

By: /s/ Mark T. Adamson

Name: /s/ Mark T. Adamson  
-----

Title: Vice President  
-----

Signatures for MONY and PAL forthcoming from Mayer Brown & Platt

**EXHIBIT 10.20**

**LEASE AGREEMENT**

**Dated as of June 1, 2000**

between  
**FU/DG INDIANOLA, LLC,**

a Delaware limited liability company, as Lessor

and  
**DOLLAR GENERAL CORPORATION,**

a Tennessee corporation, as Lessee

Property:  
U.S. Highway 82  
Indianola, Mississippi  
Sunflower County

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Appendix A Definitions

## SCHEDULES AND EXHIBITS

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Exhibit A	--	Form of Assignment and Assumption Agreement
Exhibit B	--	Description of Land
Exhibit C	--	Form of Estoppel Agreement
Exhibit D	--	Form of Reaffirmation

THIS LEASE AGREEMENT (this "Agreement") is made and entered into as of June 1, 2000, by and between FU/DG INDIANOLA, LLC, a Delaware limited liability company, as Lessor ("Lessor"), having its principal place of business at One First Union Center TW-6, Charlotte, North Carolina 28288-0166, and DOLLAR GENERAL CORPORATION, a Tennessee corporation, as Lessee ("Lessee"), having its principal place of business at 100 Mission Ridge, Goodlettsville, Tennessee 37072.

**RECITALS:**

- A. Upon satisfaction of applicable conditions precedent, Lessor shall acquire the Property on the Closing Date; and
- B. Lessor desires to let and lease to Lessee, and Lessee desires to hire and lease from Lessor, the Property.

**TERMS**

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

**ARTICLE I**

**DEFINITIONS**

Section 1.01. Definitions.

The capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in Appendix A hereto for all purposes hereof.

**ARTICLE II  
LEASE OF PROPERTY**

Section 2.01. Demise and Lease.

(a) Lessor demises on the Closing Date and leases the Property to Lessee, and Lessee does rent and lease the Property from Lessor, for the Interim Term, if any, and the Base Term and, subject to the exercise by Lessee of its renewal options as provided in Article V hereof, for the Renewal Terms.

(b) Lessee may from time to time own or hold under lease or license from. Persons other than Lessor furniture, equipment and personal property, including Lessee's Equipment and Personalty, located on or about the Property, which shall not be subject to this Lease. Lessor shall from time to time, upon the reasonable request of Lessee, promptly acknowledge in writing to Lessee or other Persons that Lessor does not own or, except as provided in Article X, have any other right or interest in or to such furniture, equipment and personal property, including

Lessee's Equipment and Personalty, and Lessor hereby waives for itself and all other Persons claiming by or through Lessor any such right, title or interest in Lessee's Equipment and Personalty.

### **ARTICLE III**

#### **RENT**

##### **Section 3.01. Interim Rent and Base Rent.**

In the event that the Rent Commencement Date shall be other than the first day of any calendar month, Lessee shall pay to Lessor on the last Business Day of the month in which Rent Commencement Date falls, arrears rent for the Interim Term equal to the amount set forth in Schedule 3.01 ("Interim Rent"). Lessee shall pay to Lessor Base Rent on each Rent Payment Date during the Base Term in the amount set forth in Schedule 3.01, and shall pay to Lessor Renewal Rent on each Rent Payment Date during any Renewal Term as prescribed by Article V. Each installment of Interim Rent, Base Rent and Renewal Rent is payable monthly in arrears.

##### **Section 3.02. Supplemental Rent.**

Lessee shall pay to the Rent Account described in Section 3.03 below, or to such other Person as shall be entitled thereto in the manner contemplated herein, any and all Supplemental Rent as the same shall become due and payable. In the event of Lessee's failure to pay when due and payable any Supplemental Rent, Lessor or such other Person shall have all rights, powers and remedies provided for herein or by law or in equity or otherwise in the case of nonpayment of Rent, subject to the terms of the Intercreditor Agreement.

##### **Section 3.03. Method of Payment.**

Interim Rent, Base Rent and Renewal Rent shall be paid in immediately available funds as of the relevant payment date to such account as Lessor or its assignee may from time to time designate (the "Rent Account") pursuant to written direction on at least ten (10) Business Days' prior written notice to Lessee. Lessee shall promptly pay Supplemental Rent to the Rent Account or to the party entitled thereto, and Lessee shall pay to such Rent Account or Lessor's assignee any Make-Whole Premium which is due and payable under this Lease. Each such payment of Rent shall be made by Lessee by wire or other transfer of funds consisting of lawful currency of the United States of America which shall be immediately available no later than 4:00 PM (New York City time) at the place of receipt on the scheduled date when such payment shall be due, unless such scheduled date shall not be a Business Day, in which case such payment shall be made at such time on the immediately preceding Business Day, with the same force and effect as though made on such scheduled dates. If any payment of Base Rent or Supplemental Rent is received after 4:00 PM (New York City time) on the date when such rent is due, such rent shall be deemed received on the next succeeding Business Day.

#### Section 3.04. Late Payment.

If any payment of Base Rent is not paid on the due date of such payment, then Lessee shall pay interest thereon at the interest rate provided for in the Notes (whether or not such notes shall be cancelled); provided, that if such payment is not paid by the third (3rd) day of each calendar month, then for each day thereafter until such Base Rent is paid, interest shall accrue on the Base Rent due but unpaid at the Default Rate. If any payment of any Supplemental Rent payable to Lessor shall be delinquent by more than fifteen days, Lessee shall pay interest thereon from the date such payment became due and payable to the date of receipt thereof by Lessor at a rate per annum equal to the Default Rate. In addition, if any payment of Rent shall not be paid by the third (3rd) day of each calendar month, Lessee shall pay to the Person entitled thereto as a late charge and as Supplemental Rent an amount equal to four percent (4%) of the unpaid Rent actually due and payable thereon. Lessee acknowledges its responsibility to pay interest and late charges and penalties owed to any third party by reason of Lessee's failure to pay when due Interim Rent, Base Rent, Renewal Rent or Supplemental Rent owed to such party.

#### Section 3.05. Net Lease, No Setoff, Etc.

This Lease is a net lease and it is agreed and intended that Interim Rent, Base Rent, Renewal Rent, Supplemental Rent and any other amounts payable hereunder by Lessee shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction and that Lessee's obligation to pay all such amounts, throughout the Interim Term, the Base Term and all applicable Renewal Terms is absolute and unconditional. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected for any reason, including without limitation:

(a) any defect in the condition, merchantability, design, quality or fitness for use of the Property or any part thereof, or the failure of the Property to comply with all Applicable Laws, including any inability to occupy or use the Property by reason of such noncompliance; (b) any damage to, removal, abandonment, salvage, loss, condemnation, theft, scrapping or destruction of or any requisition or taking of the Property or any part thereof, or any environmental conditions on the Property or any property in the vicinity of the Property; (c) any restriction, prevention or curtailment of or interference with any use of the Property or any part thereof including eviction; (d) any defect in title to or rights to the Property or any Lien on such title or rights to the Property; (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by any Person; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Lessee or any other Person, or any action taken with respect to this Lease by any trustee or receiver of Lessee or any other Person, or by any court, in any such proceeding; (g) any right or claim that Lessee has or might have against any Person or any vendor, manufacturer, contractor of or for the Property; (h) any failure on the part of Lessor or any other Person to perform or comply with any of the terms of this Lease, any other Operative Document or of any other agreement; (i) any invalidity, unenforceability, rejection or disaffirmance of this Lease by operation of law or otherwise against or by Lessee or any provision hereof or any of the other Operative Documents or any provision of any thereof; (j) the impossibility of performance by Lessee, Lessor, any other Person or all of them; (k) subject to Applicable Law, any action by any court, administrative agency or other Governmental Authority; (l) any interference, interruption or cessation in the use, possession or quiet enjoyment of the Property; or (m) any

other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether foreseeable or unforeseeable, and whether or not Lessee shall have notice or knowledge of any of the foregoing. Unless the Lease is earlier terminated in accordance with its terms, this Lease shall be noncancellable by Lessee for any reason whatsoever and, Lessee, to the extent now or hereafter permitted by Applicable Laws, waives all rights now or hereafter conferred by Applicable Law to quit, terminate or surrender this Lease or to any diminution, abatement or reduction of Rent payable hereunder. Under no circumstances or conditions shall Lessor or any Person other than Lessee be expected or required to make any payment of any kind hereunder or have any obligations hereunder with respect to the use, possession, control, maintenance, alteration, rebuilding, replacing, repair, restoration or operation of all or any part of the Property, so long as the Property or any part thereof is subject to this Lease, and Lessee expressly waives the right to perform any such action at the expense of Lessor or any other Person pursuant to any law.

#### Section 3.06. Minimum Rent.

Anything contained in this Lease or any other Operative Document to the contrary notwithstanding, payments of Interim Rent and Base Rent shall be required to be paid at times and in amounts at least sufficient to pay in full any payments required to be made in respect of (i) principal (other than any balloon or accelerated payment) and interest arising under the Debt Documents, and (ii) Head Lease Fixed Rate Interim Rent, Head Lease Base Rent and Head Lease Fixed Rate Renewal Rent under the Head Lease. Further, each payment of Termination Value or other amount due on or with respect to a termination of the Lease upon a Casualty or Condemnation shall be payable at such time and in such amount that is at least sufficient to pay in full as of the date such payment is due, the aggregate unpaid principal under the Debt Documents, together with all unpaid interest thereon accrued through the date on which such payment is made, and any Termination Value under the Head Lease (or other amount computed in reference to Termination Value or payable in respect of a Casualty or Condemnation or other termination of the Head Lease), together with any accrued but unpaid Head Lease Interim Rent, Head Lease Base Rent and Head Lease Fixed Rate Renewal Rent. Lessee acknowledges that an amount equal to the Make-Whole Premium shall be required to be paid by it in connection with the repayment of the Indebtedness after the occurrence of a Lease Event of Default.

### **ARTICLE IV**

#### **RIGHT OF FIRST REFUSAL**

##### Section 4.01. Right of First Refusal.

(a) Provided that no Lease Event of Default exists and no Lease Default has occurred and is continuing, if Lessor should at any time during the Term receive a bona fide offer to purchase the Lessor Property (the "Refusal Offer") from a third party and Lessor desires to accept such offer, Lessor shall deliver to Lessee a written notice (the "Acquisition Notice") setting forth the name of the prospective purchaser and the terms and conditions of such Refusal Offer.

(b) Lessee shall have twenty (20) days from receipt of the Refusal Offer to elect to acquire the Lessor Property pursuant to the terms and conditions of such Refusal Offer (the "Right of First Refusal") by delivering written notice thereof to Lessor. Delivery of such written notice shall obligate Lessee to purchase the Lessor Property on the date which is sixty (60) days after receipt of the Refusal Offer (or any earlier date requested by Lessee and acceptable to Lessor) and on the terms and conditions set forth in the Refusal Offer. If Lessee elects (or is required under the Refusal Offer) to purchase the Lessor Property subject to the lien of the Mortgage, Lessee shall be obligated to comply with the applicable provisions of the Debt Documents and in all events Lessee recognizes that the Right of First Refusal is subject to the terms of the Debt Documents and Head Lease. In the event Lessee shall not elect to exercise its Right of First Refusal, fails to timely deliver notice within the twenty (20) day period or a Lease Event of Default exists or Lease Default shall have occurred and be continuing at the date of exercise or at any time thereafter and prior to the conveyance of the Lessor Property, Lessee shall conclusively be deemed to have waived its Right of First Refusal as to the transaction described in the Refusal Offer in question and Lessor may thereupon proceed to sell the Lessor Property on the terms and conditions and to the party specified in the Refusal Offer in question. The Right of First Refusal shall be applicable to any future sales, and this Lease shall remain in full force and effect. Modifications may be made in the offer outlined in the Refusal Offer without the necessity of resubmitting the offer to Lessee; provided, that the purchase price is not reduced, the payment terms are not changed, and that the Closing Date is not extended for a period in excess of one hundred eighty (180) days.

#### Section 4.02. Non-Applicability of Section 4.01.

(a) Section 4.01 shall not apply to a sale, transfer, conveyance, assignment or other disposition to the purchaser at a foreclosure sale in connection with the foreclosure, or to any transferee in connection with a deed in lieu of foreclosure of the related Mortgage or with respect to any sale, transfer, conveyance, assignment or disposition which occurs during the existence of a Lease Event of Default.

(b) Notwithstanding anything herein to the contrary, the Right of First Refusal shall not be applicable if the Lessee has failed to timely exercise each option to extend the Term for each Renewal Term elected.

(c) This Article IV shall not be construed as applying to any Refinancing or reducing or modifying in any way the restrictions on transfer set forth in Article XIII or otherwise in any Operative Document.

(d) Any purchase of the Lessor Property under this Article IV will be subject to the terms and provisions of the other Operative Documents.

#### Section 4.03. Miscellaneous.

(a) If Lessee is the purchaser under this Article IV, then (and notwithstanding any terms of a bona fide offer to purchase received by Lessor) such purchase shall be on an "as is, where is" basis without any representations or warranties (other than against Lessor's Liens arising under the Lessor) and the Lessee shall and hereby agrees to release, indemnify and hold



harmless the Lessor and each other Indemnitee from and against any and all claims arising from or related to the condition of the Property, including, but not limited to, claims arising under Environmental Laws.

(b) Lessee's failure to elect to purchase the Lessor Property shall under no circumstances constitute a waiver on the part of Lessee to exercise its rights under this Article IV, with respect to any subsequent sale, transfer, conveyance, assignment or other disposition of the Lessor Property.

## **ARTICLE V**

### **RENEWAL OPTIONS**

#### Section 5.01. Renewal Options.

(a) Lessor hereby grants to Lessee the option to extend the term of this Lease for the following periods (each, a "Renewal Term"):

(i) for a period of five (5) years commencing on the date that is the day after the expiration of the Base Term and ending on the fifth (5th) anniversary of the expiration of the Base Term (the "First Renewal Term"); and

(ii) for five (5) successive terms of five (5) years each (each, an "Additional Renewal Term"), with each such Additional Renewal Term commencing on the date that is the day after the expiration of the preceding Renewal Term.

(b) In order to exercise its option to extend this Lease for any Renewal Term, the following procedure shall be followed:

(i) Lessee shall give Lessor irrevocable written notice of its intent to exercise its option to extend the term of this Lease not less than twelve (12) months prior to the expiration of the Base Term or nine (9) months prior to the expiration of any then current Renewal Term, as the case may be (the "Intent to Renew Date"), time being of the essence.

(ii) The monthly Renewal Rent (the "Renewal Rent") payable for each Renewal Term shall be equal to Fair Market Rental Value.

(c) The right of Lessee to extend the term of this Lease for any Renewal Term is contingent upon there not being any Lease Default or Lease Event of Default in existence on the date of Lessee's exercise of such right.

#### Section 5.02. Lease Provisions Applicable During Renewal.

All the provisions of this Lease shall be applicable during each Renewal Term, except the number of Renewal Terms shall be correspondingly reduced.

## ARTICLE VI

### LESSEE'S ACCEPTANCE OF PROPERTY, ENFORCEMENT OF WARRANTIES

#### Section 6.01. Waivers.

The Property is demised and let by Lessor "AS IS" in its present condition, subject to (a) the rights of any parties in possession thereof, (b) the state of the title thereto existing at the time of the commencement of the Lease Term (other than defects in, or exceptions to, title, if any, created by Lessor not otherwise arising from or contemplated by the Operative Documents), (c) any state of facts which an accurate survey or physical inspection might show, (d) all Applicable Laws, (e) any violations of Applicable Laws which may exist at the commencement of the Lease Term and (f) the presence of any Hazardous Materials at, on or under the Property or at, on or under any property in the vicinity of the Property. Lessee currently occupies the Property and acknowledges the same to be satisfactory. NO PARTICIPANT HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE VALUE, HABITABILITY, COMPLIANCE WITH ANY PLANS AND SPECIFICATIONS, CONDITION, DESIGN, OPERATION, LOCATION, USE, DURABILITY, MERCHANTABILITY, CONDITION OF TITLE, OR FITNESS FOR USE OF THE PROPERTY (OR ANY PART THEREOF) FOR ANY PARTICULAR PURPOSE, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OR ANY PART THEREOF) AND NO PARTICIPANT OR ANY AFFILIATE SHALL BE LIABLE FOR ANY LATENT, HIDDEN OR PATENT DEFECT THEREIN OR FOR THE FAILURE OF THE PROPERTY TO BE CONSTRUCTED IN ACCORDANCE WITH ANY PLANS AND SPECIFICATIONS THEREFOR, FOR THE COMPLIANCE OF THE PLANS AND SPECIFICATIONS FOR THE PROPERTY WITH APPLICABLE LAWS, FOR THE FAILURE OF THE PROPERTY, OR ANY PART THEREOF, TO OTHERWISE COMPLY WITH ANY APPLICABLE LAWS OR FOR ANY OTHER MATTER RELATING TO OR ARISING OUT OF THE PROPERTY OR UNDER THE OPERATIVE DOCUMENTS. It is acknowledged that Lessee (or an Affiliate of Lessee) and others have occupied the Property as tenant or owner immediately prior to entering into this Lease and that Lessee has inspected the Property, is satisfied with the results of its inspections of the Property and is entering into this Lease solely on the basis of the results of its own inspections and all risks incident to the matters discussed in the preceding sentence. The provisions of this Article VI have been negotiated, and the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by any Participant or any Affiliate thereof, express or implied, with respect to the Property, that may arise pursuant to any law now or hereafter in effect, or otherwise and specifically negating any warranties under the Uniform Commercial Code.

#### Section 6.02. Lessee's Right to Enforce Warranties.

(a) Subject to Section 6.02(b) below, Lessor hereby assigns and sets over to Lessee, and Lessee hereby accepts the assignment of all of Lessor's right, title and interest, and estate in, to and under, any and all warranties and other claims ("Warranties") against dealers, manufacturers, vendors, contractors and subcontractors relating to the construction, manufacture,

sale, use, operation or maintenance of the Property or any portion thereof now existing or hereafter acquired (excluding from such assignment any such warranties and claims which by their terms are not assignable without loss of some or all of the benefits of such warranties or claims or require the consent of any Person where such consent has not been obtained); provided, however, that no assignor shall have no obligations under, or liabilities with respect to, any such warranties and claims. To the extent that any Warranties are not hereby assigned to Lessee, Lessor, at the risk, cost and expense of Lessee, agrees to cooperate with Lessee and act at the reasonable direction of Lessee to administer and prosecute any claim arising from or in connection with any Warranty.

(b) Unless Lease Event of Default exists or a Lease Default shall have occurred and be continuing, Lessor authorizes Lessee (directly or through agents) at Lessee's expense to, and Lessee shall, assert diligently for the benefit of Lessor (or other assignor or owner), during the Lease Term, Lessor's rights (or such other assignor or owner) (if any) under any applicable Warranty and any other claim that Lessee or Lessor (or such other assignor or owner) may have against any dealer, vendor, manufacturer, contractor or subcontractor with respect to the Property or any portion thereof.

(c) Unless a Lease Event of Default exists or a Lease Default shall have occurred and be continuing, Lessor agrees, at Lessee's risk and expense, to cooperate with Lessee and take all reasonable action necessary as specifically requested by Lessee to enable Lessee to enforce all of Lessor's rights (if any) under this Section 6.02.

## **ARTICLE VII LIENS**

### Section 7.01. Liens.

Lessee shall not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to (i) any and all of the Property, title thereto or any interest therein, (ii) this Lease or the leasehold interest created hereby, (iii) Rent, title thereto or any interest therein or (iv) the rentals payable with respect to the subletting of the Property, except Permitted Liens and Permitted Encumbrances. Lessee shall promptly, but not later than thirty (30) days after Lessee has Actual Knowledge of the occurrence thereof, at its own expense, take such action as may be necessary duly to discharge or eliminate or bond in a manner reasonably satisfactory to Lessor any such Lien (other than Permitted Liens and Permitted Encumbrances).

NOTHING CONTAINED IN THIS LEASE SHALL BE CONSTRUED AS CONSTITUTING THE CONSENT OR REQUEST OF LESSOR OR ANY AFFILIATE THEREOF, EXPRESS OR IMPLIED, TO OR FOR THE PERFORMANCE BY ANY CONTRACTOR, LABORER, MATERIALMAN OR VENDOR OF ANY LABOR OR SERVICES OR FOR THE FURNISHING OF ANY MATERIALS FOR ANY CONSTRUCTION, ALTERATION, ADDITION, REPAIR OR DEMOLITION OF OR TO THE PROPERTY OR ANY PART THEREOF, WHICH WOULD RESULT IN ANY LIABILITY OF ANY SUCH PERSON FOR PAYMENT THEREFOR. NOTICE IS HEREBY GIVEN THAT NO PARTICIPANT OR ANY AFFILIATE WILL BE LIABLE FOR ANY

LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING AN INTEREST IN THE PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANICS OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF ANY PARTICIPANT OR ANY AFFILIATE THEREOF IN AND TO THE PROPERTY.

## **ARTICLE VIII**

### **USE AND REPAIR**

#### Section 8.01. Use.

The Property and each portion thereof is intended to be used as a distribution center in connection with the ordinary and customary operations of Lessee and shall not (i) be used in a discriminatory manner taking into account other properties owned, leased or operated by Lessee, (ii) be used in a manner that would cause the Property or the Equipment to be "tax-exempt use property" within the meaning of Section 168(h) of the Code or "tax-exempt bond financed property" within the meaning of Section 168(g)(5) of the Code, (iii) be used in a manner that would constitute a nuisance or cause or increase the risk of causing any environmental liability with respect thereto, (iv) be used in a manner that would invalidate any Warranty on or with respect to the Property or any portion thereof or any insurance policy maintained or required to be maintained on or in respect of the Property, (v) be used in a manner that would violate any Applicable Laws, (vi) be used for the mining for removal of any oil, gas, minerals or dirt or (vii) other than in the ordinary course of the business of Lessee be used in a manner that involves the storage, handling or disposing of Hazardous Materials (provided that all such storage, handling or disposing shall comply with Environmental Laws). In the event that Lessee desires to change the use of the Property or any portion thereof other than as a distribution center in connection with its ordinary and customary operations, Lessee shall provide notice to Lessor of the intended use, which use shall comply with clauses (ii) through (vii) above. In addition, the Property shall not be used in connection with manufacturing activities other than light assembly, and any change of use shall not increase the level at which Hazardous Materials are used on the Property, increase the risks that the Property or any Indemnitee shall be subjected to any environmental or other Claim or that any Hazardous Material will be released or discharged at or from the Property or that Remedial Action will be required with respect to any portion of the Property. Further, any change in use with respect to the Facility shall not result in structural alterations or modifications to the Property or any portion thereof or impair the utility, remaining useful life or current or residual value of the Property or any portion thereof.

#### Section 8.02. Maintenance.

Lessee, at its own expense, shall at all times, (i) maintain the Property and each portion thereof in good condition and repair, in at least the condition as existed on the Closing Date, ordinary wear and tear excepted, (ii) maintain the Property and each portion thereof on a nondiscriminatory basis taking into account other properties owned, leased or operated by Lessee, (iii) maintain the Property and each portion thereof in accordance with the requirements of all of the other Operative Documents, applicable Warranties and all insurance policies relating

to the Property maintained with respect to the Property or required to be maintained hereunder and in compliance with Applicable Laws, (iv) make repairs, improvements, replacements (of parts, equipment, components, fixtures and improvements) and alterations to the Property as may be required by Applicable Laws and as necessary to keep the same in the condition required by the preceding clauses (i) through (iii), whether interior or exterior or relating to parking areas, road access or otherwise, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen and regardless of whether such expenditures would constitute expenses under GAAP if made by the owner of the Property. Without limitation of the foregoing and subject to Article XII, Lessee shall replace any Equipment that has become lost, stolen, destroyed, worn out or otherwise not usable in accordance with its intended purposes in the same manner as such Equipment is available for use on the Closing Date. Except to the extent replaced in accordance with the maintenance and other obligations of the Lessee hereunder, no portion of the Equipment shall be removed from the Property.

#### Section 8.03. Alterations.

(a) Provided that no Lease Event of Default has occurred and is continuing, at any time and from time to time, Lessee, at its sole cost and expense (1) may make non-structural and structural Alterations to the Property, without any notice or consent; and (2) shall make structural or non-structural Alterations required by Applicable Law; provided that notice thereof shall be provided to the Lessor if the estimated cost of any Alteration exceeds \$500,000.00; provided further that no elective Alteration shall (i) impair the utility, remaining useful life or current or residual fair market value of the Property or any portion thereof, in each case assuming that the Improvements are then being operated and maintained in accordance with this Article VIII, (ii) cause the Property or any portion thereof to be characterized as "limited use property" (as described in Section 4.09 of Revenue Procedure 75-28 or Revenue Procedure 76-30), (iii) result in the removal of any built-in equipment or fixtures currently on the Property (unless such equipment or fixtures are replaced with similar equipment and fixtures) or any parts on or attached to the Equipment (unless such parts are replaced with similar or improved parts), (iv) reduce the square feet of the Improvements on the Property, or (v) increase in any material respect the risk of liability to the Lessor or any Indemnitee under any Environmental Laws, other Applicable Laws or otherwise.

(b) Every Alteration shall comply with the following terms (which compliance shall be at Lessee's sole cost and expense): (i) to the extent costing more than \$500,000.00 the Alteration shall be made under the supervision of a certified architect or civil engineer who shall be licensed in the appropriate jurisdiction, (ii) the structural integrity of the existing Improvements will not be impaired and the value, utility and remaining useful life of the Equipment will not be adversely affected, (iii) Lessee shall obtain any licenses or permits required, copies of which shall be delivered to Lessor upon written request, (iv) such Alterations will not encroach upon any adjacent premises unless appropriate easements and consents shall have been obtained and, to the extent necessary or prudent filed in all appropriate land records or other recording offices. In connection with any Alteration, Lessee shall perform and complete all work in a good and workmanlike manner in compliance with Applicable Laws without the imposition of any Liens, assessments or encumbrances other than Permitted Liens or Permitted Encumbrances. Lessee shall either (i) maintain or cause to be maintained at all times during construction (x) builder's risk insurance naming Agent as the named insured and (y) commercial

general liability insurance required under this Lease naming each Indemnitee as additional insureds or (ii) self insure the risks otherwise insured by the policies required hereunder, which self insurance shall be subject to, and available only upon satisfaction of, the provisions of Section 9.01(b).

#### Section 8.04. Title to Alterations.

Title to Alterations shall without further act vest in Lessor (except to the extent replacing or becoming a part of the Equipment, in which case title to such Alterations shall vest in the Head Lessor) and shall be deemed to constitute a part of the Property and be subject to this Lease in the following cases:

- (a) such Alteration shall be in replacement of or in substitution for a portion of the Improvements or other Property as of the date hereof,
- (b) such Alteration shall be required to be made pursuant to the terms of Section 8.02; or
- (c) such Alteration shall be Nonseverable.

Lessee shall, at Lessor's request and at Lessee's sole cost and expense, execute and deliver any deeds, bills of sale or assignments reasonably requested by Lessor to evidence the vesting of title in and to such Alterations in Lessor (or Head Lessor to the extent relating to the Equipment). If an Alteration is not within any of the categories set forth in Section 8.04(a) through Section 8.04(c), then title to such Alteration shall vest in Lessee and may be removed by Lessee to the extent permitted in accordance with Article X hereof. All Alterations to which title shall vest in Lessee as aforesaid, and all Lessee's Equipment and Personalty, so long as removal thereof shall not result in the violation of any Applicable Laws or this Lease, may be removed at any time by Lessee; provided that Lessee shall, at its expense, repair any damage to the Property caused by the removal of such Alteration or Lessee's Equipment and Personalty and shall restore the Property to substantially the same condition as existed prior to such Alteration being made. Lessee shall provide "AS-BUILT" plans and a new survey (meeting the requirements of the original survey) for any Alterations costing in excess of \$2,000,000 determined on an aggregate basis. Once such \$2,000,000 aggregate threshold has been met, Lessee shall be required to provide "AS-BUILT" plans and a new survey on each other occasion where additional Alterations in the aggregate exceed \$2,000,000.

#### Section 8.05. Compliance with Law; Environmental Compliance; Engineering Matters.

(a) Lessee, at Lessee's expense, shall comply in all material respects at all times with all Applicable Laws, including Environmental Laws, shall conduct its operations on the Property in accordance in all material respects with Applicable Laws and shall cause all of its activities on the Property, and use reasonable efforts to cause all of its activities about the Property, to comply in all material respects with Applicable Laws. Such compliance includes, without limitation, Lessee's obligation, at its expense, to take Remedial Action when required by Applicable Laws (in accordance with Applicable Law and this Lease) whether such requirement is now or

hereafter existing. In the event that Lessee is required or elects to enter into any plan relating to a material remediation of the Property with respect to any Environmental Laws, Lessee shall on a quarterly basis (or more frequently if reasonably requested by Lessor) apprise Lessor of the status of such remediation plan and provide copies of all material correspondence, plans, proposals, contracts and other documents relating to such action and plan or proposed plan.

(b) Lessee shall notify Lessor within ten (10) days if (i) Lessee becomes aware of the presence of any Hazardous Material at, on, under, emanating from, or migrating to, the Property in any quantity or manner, which could reasonably be expected to violate in any material respect any Environmental Law or give rise to any liability or the obligation on the part of the Lessee or Lessor to take Remedial Action or other obligations under any Environmental Law, or (ii) Lessee receives any notice, claim, demand or other communication from a Governmental Authority or a third party regarding the presence of any Hazardous Material at, on, under, within, emanating from or migrating to the Property which could reasonably be expected to violate any Environmental Law or give rise to any liability or to remediation or other obligations under any Environmental Law. If any event described in this subclause (b) requires Remedial Action, the provisions set forth in subclause (c) below will apply mutatis mutandis.

(c) (i) In the event there exists any site condition, circumstance, activity, practice, incident, action or plan, whether ongoing or in the past, and that is reasonably likely to result in:

(a) a current or future violation of or liability under any Environmental Law, or (b) the presence, on or after the date hereof, of any Hazardous Material that requires Remedial Action at, on, under, in connection with, or which is migrating from, the Property ("Areas of Environmental Concern"), then Lessee, at its sole cost and expense, shall, as soon as reasonably practicable, but in any event within six months of the identification of such Area of Environmental Concern, or such later date as may be required by the applicable governmental agency or agencies, develop and finalize a work plan prepared by an Approved Environmental Consultant which sets forth all Remedial Action to be undertaken in connection with each Area of Environmental Concern identified at or relating to the Property (the "Plan"), and shall provide such Plan to Lessor. Lessor shall have the right to review and comment on such Plan prior to submission of the Plan to the applicable governmental agency or agencies. Lessee shall promptly perform, or cause to be performed on its behalf, all Remedial Action required under the Plan or otherwise necessary under the terms of this Lease to obtain Final Governmental Approval (as hereinafter defined) and shall diligently pursue such Remedial Action to completion, in accordance with the requirements of any Environmental Law or applicable governmental agency. Lessee shall on a quarterly basis (or more often if reasonably requested) apprise Lessor of the status of such Plan, and provide copies of all material correspondence, drafts of such Plan, agreements, documents, notices and other documentation existing with respect to the Plan and/or Area of Environmental Concern. In addition to the requirements in subparagraphs (a) and (b) above, and in connection with any actions undertaken pursuant to this Agreement, Lessee shall in all material respects at all times comply with all applicable Environmental Laws and with all other applicable federal, state and local laws and shall use an Approved Environmental Consultant to perform any Remedial Action.

(ii) Within thirty (30) days prior to the date that Remedial Action shall be required to be completed with respect to any Area of Environmental Concern (the "Required Remedial Action Date"), Lessee shall request and when obtained submit to Lessor written confirmation from the applicable governmental agency that no further Remedial Action is required to be taken ("Final Governmental Approval").

(iii) In the event that Final Governmental Approval is not received by Lessor by the Required Remedial Action Date, Lessee shall provide Lessor, within thirty (30) days after the Required Remedial Action Date, with a bond, letter of credit or similar financial assurance, in each case satisfactory to the Lessor that sufficient funds are available to pay for the completion of any remaining Remedial Action required of Lessee and to obtain receipt of Final Governmental Approval; provided, however, so long as Lessee maintains at least an Investment Grade rating and acknowledges to Lessor its intent to complete such Remedial Action, no bond, letter of credit or similar financial assurance shall be required. Lessee covenants to notify the Lessor in the event that Lessee does not have at least an Investment Grade rating.

(d) Based upon the initial Environmental Reports required to be delivered to Lessor with respect to the Property, the Lessee shall be required to perform the acts set forth on Schedule 8.05(d) hereof. All such acts shall be required to be performed within six (6) months of the Closing Date, and upon completion of such acts, Lessee shall provide prompt notice to Lessor.

(e) Engineering reports prepared on behalf of Lessor with respect to the Real Property evidenced certain defects and matters to be corrected as set forth on Schedule 8.05(e). Lessee shall proceed with reasonable diligence to perform the tasks and correct the matters described in Schedule 8.05(e) in a good and workmanlike manner and otherwise so as to comply with the terms of the Lease; provided, that such tasks shall be performed and matters corrected as aforesaid in any event by the date that is six (6) months from the Closing Date.

#### Section 8.06. Payment of Impositions.

Lessee, in accordance with Section 19.02, shall pay or cause to be paid all Impositions before any fine, penalty, premium, further interest or cost may be assessed or added for nonpayment, such payments to be made directly to the taxing authorities where feasible. If requested, Lessee shall deliver, to Lessor copies of receipts, canceled checks or other documentation reasonably satisfactory, to Lessor evidencing payment of Impositions and Lessee agrees to maintain in its records evidence of payment of real estate, personal property and other ad valorem taxes for a period of no less than eight (8) years. If any such Imposition may, at the option of the taxpayer, lawfully be paid in installments (regardless of whether interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same in installments; provided, however, upon return of the Property or any portion thereof under the terms of this Lease, Lessee shall pay any accrued but unpaid Impositions on the Property (together with accrued interest, if any) or such portion thereof that is being returned and shall pay all unpaid installments (together with accrued interest, if any) whether or not due. If a Lease Event of Default exists or a Lease Default shall have occurred and be continuing, Lessee shall pay to the Lessor, in monthly installments in amounts equal to the Impositions (or estimated



to equal such Impositions) (together with accrued interest, if any) to be held and applied by the Lessor, including on such initial payment date such additional amount as shall be necessary to assure that together with the upcoming months' installment, the full amount of each Imposition (together with accrued interest, if any) shall have been received by Lessor prior to the due date of such Imposition. Lessee shall have the right to contest any Imposition, subject to the following: (i) such contest shall be at its sole cost, risk and expense, (ii) if the Imposition being contested is in the amount of \$500,000.00 or more, Lessee shall provide notice to Lessor within ten (10) days of such Imposition and contest and the grounds thereof, (iii) such contest shall be by appropriate legal proceedings conducted in good faith and with due diligence, (iv) such contest will operate to suspend the collection of, or other realization upon, such Imposition, from any Property or other interest of Lessor or any assignee, or from any Rent (or otherwise affect Lessee's obligation to pay, and Lessor's right to receive, Rent), (v) such contest will not adversely affect the Agent's Lien on any Property, the Head Lessor's rights under the Head Lease or with respect to the Equipment or Lessor's right to any Property, (vi) such contest will not interfere with the possession, use or occupancy or sale of any Property, (vii) such contest will not subject any Indemnitee to any civil or criminal liability or require the disclosure of Confidential Information of such Indemnitee except upon terms and conditions acceptable to such Indemnitee, and (viii) Lessee shall not postpone the payment of any Imposition for such length of time as shall permit the Property to become subject to a Lien created by such item being contested that is prior to the Lien securing the Indebtedness or any rights of Head Lessor in connection with the Equipment. Lessee shall pay any Imposition (and related costs) promptly after foregoing any contest or after receipt of a final adverse judgment, or after notice from Lessor that such contest is not being performed in accordance with the terms hereof.

#### Section 8.07. Adjustment of Impositions.

Impositions with respect to the Property for a billing period during which Lessee's obligation to indemnify Lessor pursuant to this Lease expires or terminates as to the Property shall be adjusted and prorated on a daily basis between Lessor and Lessee, whether or not such Imposition is imposed before or after such expiration or termination, and Lessee's obligation to pay its pro rata share thereof shall survive such expiration or termination; provided, that Lessee shall be required to pay any Impositions (together with accrued interest, if any) which it has elected to or has been permitted to pay in installments, until the due date of such installments.

#### Section 8.08. Utility Charges.

Lessee shall pay or cause to be paid all charges for electricity, power, gas, oil, water, telephone, sanitary sewer services and all other utilities used in or on the Property prior to and during the Lease Term, and such obligation on the part of Lessee shall survive the expiration or earlier termination of this Lease until all such outstanding balances for services rendered prior to or during the term of this Lease have been paid. Lessee shall have the right to select such service providers for the Property.

## ARTICLE IX

### INSURANCE

#### Section 9.01. Coverage.

(a) Lessee shall maintain insurance and insure the Property and the operations and liabilities related thereto at least to the same standards as applicable to comparable properties owned, operated or leased by it in accordance with prudent practice. Without limiting the foregoing, subject to

Section 9.01(b), Lessee shall maintain minimum insurance of the types, in the amounts and meeting the requirements set forth on Schedule 9.01(a) attached hereto and made a part hereof. Lessee represents that Schedule 9.01(a) sets forth the insurance maintained by Lessee as of the Closing Date, including self-insurance and deductible amounts, and that such insurance is in full force and effect as of the Closing Date.

(b) Subject to the approval of Lessor on the Rent Commencement Date, so long as (i) no Lease Event of Default exists or Lease Default has occurred and is continuing, (ii) Lessee's Adjusted Net Worth equals Two Hundred Million Dollars (\$200,000,000.00) or more and (iii) the long term senior unsecured debt of Lessee, if then rated, does not have a rating of less than Investment Grade and (iv) Lessee meets the self-insurance requirements of the NAIC for a "Bond Lease Credit Tenant Loan" on a continuing basis, Lessee shall be entitled to self-insure and/or have deductible amounts as it may elect (the "Self-Insurance Amount") against any and all risks it would otherwise be required to insure against under Section 9.01(a). Notwithstanding the foregoing, in the event that the Agent shall have determined that there has occurred a material adverse change in the credit quality of Lessee or a significant economic downturn in Lessee's particular industry, or the Agent otherwise determines in its reasonable discretion and based on quantitative criteria that the Self-Insurance Amount exceeds industry standards or an acceptable level as reasonably determined by the Holders, then the Agent shall provide notice to the Lessee setting forth the revised Self-Insurance Deductible Amount, specifying the reason or reasons for the downward adjustment to the Self-Insurance Amount and specifying any additional insurance required to be obtained by the Lessee hereunder. From the date of such notice, the Lessee shall have thirty (30) days in which to arrange for the insurance coverage to be obtained by the Lessee as required by Lessor, such insurance to be on the terms and conditions otherwise set forth where the Lessee's self-insurance right is not available or is not needed. Notwithstanding the fact that Lessee may at any time be permitted to self-insure pursuant to this Section 9.01(b), to the extent that (i) Lessee maintains a policy or policies of commercial general liability insurance with respect to the Property, Lessee shall cause each Indemnitee to be named as an additional insured on such policy or policies and (ii) Lessee maintains a policy or policies of property insurance with respect to the Property, Lessee shall cause Agent (so long as any obligation under the Debt Documents remains to be satisfied) and, thereafter, Lessor to be named as a named insured on such policy or policies to the extent of their interests. So long as no Lease Default or Lease Event of Default exists, any loss payable under insurance policies maintained in respect of damage to the Property shall be paid to Lessee for losses less than \$500,000.

(c) Nothing in this Article IX shall prohibit the Lessee from maintaining at its expense insurance on or with respect to the Property, naming the Lessee as insured and/or loss

payee for an amount greater than the insurance required to be maintained under this Section 9.01, unless such insurance would conflict with or otherwise limit the availability of or coverage afforded by insurance required to be maintained under Section 9.01. Nothing in this Section 9.01 shall prohibit the Lessor from maintaining at its expense other insurance on or with respect to the Property or the operation, use and occupancy of the Property, naming the Lessor as insured and/or payee, unless such insurance would conflict with, cause the Lessor to be a coinsurer or otherwise limit or adversely affect the ability to obtain, or the cost of, the insurance required to be maintained under Section 9.01.

(d) Copies of policies required to be maintained under Schedule 9.01 (or certificates thereof indicating compliance with the provisions of this Article

IX) shall be delivered to Lessor on each anniversary of the Closing Date and, in any event, thirty (30) days prior to the expiration of the applicable policy.

(e) Irrespective of the cause thereof, no Participant or any Affiliate of the foregoing shall be liable for any loss or damage to any buildings or other portion of the Property resulting from fire, explosion or any other casualty or event or circumstance. In the event of Lessee's failure to obtain or maintain the insurance called for under this Lease, Lessor shall have the right, together with Lessor's remedies set forth herein, to obtain the policies of insurance required under this Lease and to bill Lessee for the premium payments therefore, together with interest at the Default Rate, in each case as Supplemental Rent. No Person other than Lessee shall have any obligation to maintain insurance of any nature or type whatsoever.

(f) If the Property is in an area designated as a "flood prone" area pursuant to the Flood Disaster Protection Act of 1973, or any amendments or supplements thereto or is in a zone designated A or V, then Lessee shall comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973. In addition, Lessee will fully comply with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as each may be amended from time to time, and with any other Applicable Law concerning flood insurance to the extent it applies to the Property or any portion thereof.

## **ARTICLE X RETURN OF PROPERTY TO LESSOR**

Section 10.01. Return of Property to Lessor.

Lessee shall, upon the expiration or termination of this Lease, and at its own expense, return the Property and each portion thereof, including without limitation the Equipment, to Lessor by surrendering the same into the possession of Lessor:

(a) free and clear of all Liens, except that Lessee shall have no responsibility or liability in respect of (i) Lessor Liens, (ii) any Lien created by the Debt Documents and (iii) any Lien created by the Head Lease; and

(b) in compliance with all Applicable Laws and in compliance with the maintenance conditions required by this Lease. All Alterations and Lessee's Equipment and Personalty not removed by Lessee by the last day of the Lease Term (but in the event of a termination other than

upon the expiration of the Base Term or any Renewal Term, within thirty (30) days after said termination of this Lease), other than those Alterations as to which title shall vest in Lessor pursuant to Section 8.04 (which may not be removed), shall be deemed abandoned in place by Lessee and shall become the property of Lessor. Lessee shall pay or reimburse Lessor for any reasonable, actual, out-of-pocket costs incurred by Lessor (i) in connection with the removal or disposal of such relinquished property (less the actual salvage value thereof), or (ii) to bring any Property into compliance with all Applicable Laws and the provisions hereof. The return of the Property shall survive the expiration or termination of this Lease.

Upon the return of the Property, Lessee shall deliver therewith:

- (i) all transferable licenses, permits and the like by general assignment, without warranty or recourse;
- (ii) as built-drawings including plans for HVAC, mechanical and electrical systems, to the extent available and a survey;
- (iii) keys to the Property;
- (iv) to the extent permitted by Applicable Law and contact or warranty, assignment of all maintenance contracts and existing warranties applicable to the Property or any portion thereof by general assignment, without warranty or recourse;
- (v) a Phase I Environmental Site Assessment recently prepared (no more than sixty (60) days prior to the date of return) by an Approved Environmental Consultant which Phase I Environmental Site Assessment shall evidence no Areas of Environmental Concern requiring further assessment or Remedial Action; and
- (vi) unless otherwise directed by the Lessor, the Equipment shall be disassembled and placed in a state of readiness so as to permit such Equipment to be picked up by a shipper designated by Lessor for immediate loading without the necessity of additional labor, cost or expense.

In the event that the Property is not timely returned meeting the requirements hereof, Lessee shall be required to continue paying Rent as provided herein.

Notwithstanding anything herein to the contrary, Lessee may elect to return the Equipment on any anniversary of the commencement date of the Base Term or any applicable Renewal Term commencing with the twelfth anniversary of the commencement date of the Base Term. In the event that the Lessee desires to elect to return such Equipment, the Lessee shall provide written notice to Lessor and Head Lessor at least one (1) year prior to the anniversary of the commencement date of the Base Term (or any Renewal Term, as the case may be) in which Lessee desires to return the Equipment. Upon the return of the Equipment, Lessee shall be required to disassemble and place such Equipment in a state of readiness to permit such Equipment to be picked up by a shipper designated by Lessor for immediate loading without the necessity of additional labor, cost or expense. In addition, Lessee shall otherwise have fulfilled

its obligations under this Section 10.01 with respect to the Equipment. Upon proper election of Lessor to return the Equipment and timely compliance by Lessee with the provisions hereof, "Property" shall no longer be deemed to include the Equipment or any interest therein.

## **ARTICLE XI**

### **ASSIGNMENT BY LESSEE**

Section 11.01. Assignment by Lessee. So long as no Lease Default or Lease Event of Default has occurred and is continuing, Lessee may, at Lessee's sole expense, without the consent of Lessor, assign this Lease to any Person; provided, however, that any such Person or other Person is not (I) a tax-exempt entity (within the meaning of Section 168(h) of the Code) or (II) a debtor or debtor-in-possession in a voluntary or involuntary bankruptcy proceeding at the commencement of the assignment; provided, however, that no such assignment shall become effective until (i) a fully executed copy of an assignment and assumption agreement, substantially in the form of Exhibit A attached hereto, shall have been delivered to Lessor, and (ii) such assignee shall have executed such instruments and other documents and provided such further assurances as Lessor shall reasonably request to ensure that such assignment is expressly subject and subordinate to the Assignment of Lease, the other Debt Documents, the Head Lease and this Lease and is enforceable in accordance with its terms. Any assignee shall assume in writing any obligations of Lessee arising from and after the effective date of the assignment. Notwithstanding any such assignment, Lessee shall not be released from its primary liability hereunder and shall continue to be obligated for all obligations of "Lessee" in this Lease, which obligations shall continue in full force and effect as obligations of a principal and not of a guarantor or surety, as though no assignment had been made. Lessee will have the right, subsequent to any assignment (a) to receive a duplicate copy of each notice of default sent by Lessor to Lessee or any assignee (but such notice shall be effective as against the Lessee, as well as any subsequent assignees, even if a copy has not been delivered to such requesting assignee), and (b) to cure any default by Lessee or other assignee under the Lease within the cure period provided for hereunder. Lessee's liability hereunder shall continue notwithstanding the rejection of this Lease by an assignee of this Lease pursuant to Section 365 of Title 11 of the United States Code, any other provision of the Bankruptcy Code, or any similar law relating to bankruptcy, insolvency, reorganization or the rights of creditors, which arises subsequent to such assignment. In the event Lessee assigns this Lease and it shall thereafter be rejected in a bankruptcy or similar proceeding, a new lease identical to this Lease shall be reinstated as between Lessor and Lessee without further act of any party; provided Lessor shall not be obligated to deliver to Lessee possession of the Property. Nothing herein shall be construed to permit Lessee to mortgage, pledge, hypothecate or otherwise collaterally assign in any manner or nature whatsoever Lessee's interest under this Lease in whole or in part. Lessee shall provide written notice to Lessor, Agent and Head Lessor of any assignment of this Lease within ten (10) Business Days prior to the effective date thereof and an executed copy of the agreement of assignment and assumption within thirty (30) days after the execution thereof. To the extent an assignee of this Lease fails to perform on behalf of Lessee the obligations of Lessee hereunder, and Lessee performs such obligations, then Lessee shall be subrogated to the rights of Lessor as against such assignee in respect of such performance.

## ARTICLE XII

### LOSS; DESTRUCTION; CONDEMNATION OR DAMAGE

#### Section 12.01. Event of Loss.

If there shall occur an Event of Loss with respect to the Property, Lessee shall give Lessor prompt written notice thereof and elect, within thirty (30) days after the occurrence of the Event of Loss, one of the following options (provided that Lessee's election of proceeding under clauses (b) or (c) shall be effective only if restoration or substitution, as the case may be, can be completed by the time specified in such clauses (b) and (c)):

(a) Offer to purchase the Property from Lessor, on a date specified in such notice, which date shall be a date for which a value is set forth on Schedule 12.01 hereto (the "Termination Value Date") occurring not less than ninety (90) days and not not than one hundred fifty (150) days after the date of such Event of Loss, for a purchase price equal to the sum of (i) the Termination Value for the Property, determined as of such Termination Value Date, plus (ii) all unpaid Rent with respect to the Property due and (without duplication) all Rent with respect to the Property accruing, but unpaid through such Termination Value Date, plus (iii) an amount equal to the reasonable out-of-pocket expenses of any Indemnatee relating to the purchase, if any, by Lessee as a result of such Event of Loss including reasonable attorneys' fees and costs actually incurred. Lessor shall have sixty (60) days from the date of receipt of Lessee's offer to decide whether to reject such offer, otherwise Lessor shall be deemed to have accepted such offer;

(b) Restore and rebuild the Improvements and Fixtures and repair and replace the Equipment damaged or destroyed as a result of such Event of Loss so as to have at least a value, utility, condition, operating function and remaining useful life equal to the value, utility, condition, operating function and remaining useful life of the Property immediately prior to such Event of Loss (assuming compliance with this Lease), and in all events in the condition required by Section 8.02, such restoration and replacement to be completed the earlier to occur of (x) the first anniversary of the Event of Loss, or (y) six months prior to the expiration of the Lease Term (and Lessee shall remain liable for the completion of such restoration beyond the expiration of the Lease Term to the extent not completed prior to such expiration and shall pay Base Rent (or Renewal Rent as the case may be) and Supplemental Rent with respect to the Property from the date of expiration to the date of completion); or

(c) Offer to substitute for the Property a Substitute Property in compliance with Article XXIII, such substitution to be completed within the earlier of (A) one hundred eighty (180) days after an Event of Loss and (B) six months prior to the expiration of the Lease Term. Upon consummation of the substitution under Article XXI, Net Proceeds, if any, relating to the Withdrawn Property shall be paid to or retained by Lessee. Lessor shall have thirty (30) days from the date of receipt of Lessee's offer to accept such offer, if such offer is not accepted within such time period, then Lessor shall be deemed to have rejected such offer and Lessee shall proceed under clauses (a) or (b).

If Lessee makes an offer to purchase pursuant to clause (a) above of this Section 12.01, and Lessor accepts such offer or is deemed to accept such offer (taking into account the last sentence of Section 12.01(a)) within the sixty

(60) day period referred to in the last sentence of clause (a) above, Lessee shall pay to Lessor the Termination Value and Rent described in said clause (a) not later than the Termination Value Date; provided that any Net Proceeds related to the Property then held by Lessor (or its assignee or designee) shall be credited against the portion of such Termination Value payable to Lessor and the balance of Net Proceeds, if any, shall be paid to or retained by Lessee. Concurrently with the payment in full of the amounts payable pursuant to said clause (a), the terms of Article XIII shall be complied with.

In the event Lessee has made the election described in either (b) or (c) above and, notwithstanding diligent efforts in good faith, has failed to comply with terms thereof within the periods described, then Lessee shall be deemed to have made the offer described in (a) above to purchase the Property and the Termination Value Date shall be deemed to be the next succeeding date set forth on Schedule 12.01 occurring thirty (30) days after the expiration of the period described in (b) or (c) (as applicable), or if there is no such date, the last date on Schedule 12.01, as the case may be.

In the event Lessor rejects the offer of Lessee to purchase the Property as provided in clause (a) of this Section 12.01, the following amount shall be paid to or retained by Lessor on such Termination Value Date: (A) all Net Proceeds related to the Property; provided that, if Lessee is self-insured (as permitted above) by means of deductibles, retained risks or no insurance whatsoever, Lessee shall pay such amounts and any additional amounts so that Lessor receives in total (including any Net Proceeds) an amount that would have been paid by a third-party insurer under a customary commercial all-risk full replacement-value insurance policy substantially similar to that described in Schedule 9.01 without deductibles or retained risks replacement value of the Improvements immediately preceding the Event of Loss, shall be as mutually agreed between Lessee and Lessor and, failing such agreement within fifteen (15) days of the request of either party to do so, by the Appraisal Procedure), plus (B) unpaid Rent due with respect to the Property on such Termination Value Date.

Upon payment in full of the amounts set forth in clauses (A) and (B) of the preceding sentence (in the event Lessor rejected Lessee's offer) or clause (a) of the first sentence of this Section 12.01 (in the event Lessor accepted Lessee's offer to purchase), (1) the Lease Term shall end, and (2) the obligations of Lessee hereunder (other than any obligations expressed herein as surviving termination of this Lease) with respect to such Property shall terminate as of the date of such payment.

If Lessor elects to reject the offer of Lessee hereunder to purchase the Property pursuant to this Section 12.01 while the Indebtedness under the Debt Documents is outstanding or the Head Lease has not expired by its terms or otherwise been terminated, any notice of rejection shall only be effective, and Lessor shall only be entitled to reject such offer, if such notice is concurrently consented to in writing by the Agent on behalf of the Holders or by the Head Lessor or both the Agent and the Head Lessor, as the case may be, and absent such required consent by the applicable Persons within the sixty (60) day period referred to in the last sentence of the clause (a) above, Lessor shall be deemed to have accepted Lessee's offer.

Section 12.02. Application of Payments Upon an Event of Loss When Lease Continues.

Subject to Section 12.04, payments received at any time by Lessor or Lessee from any Governmental Authority or other Person with respect to any Event of Loss in a case in which this Lease will not terminate (and there will occur no abatement or reduction of rent) because Lessee has elected to proceed under clause (b) of Section 12.01, shall be paid to Lessee to be applied, as necessary, to the repair or restoration of the Property as described in clause

(b) of Section 12.01. Any excess insurance proceeds remaining thereafter shall be retained by Lessee and any excess condemnation award remaining thereafter shall be paid to Lessor to be applied to reduce the Indebtedness.

Section 12.03. Application of Payments Not Relating to an Event of Loss.

In case of a Condemnation or Casualty which is not an Event of Loss or which does not result in a termination of this Lease in accordance with the above provisions of Article XII, this Lease shall remain in full force and effect, without any abatement or reduction of Rent; provided, however, Lessee acknowledges that any Condemnation or Casualty with respect to the Equipment that does not result in an Event of Loss with respect to the Property shall require that the Equipment be replaced, repaired, restored so as to have at least a value, utility, condition, operating function and remaining useful life equal to the value, utility, condition, operating function and remaining useful life of the Equipment immediately prior to such occurrence (assuming compliance with this Lease). Subject to Section 12.04, all Net Casualty Proceeds and all Net Condemnation Proceeds, as the case may be, shall be paid to Lessee to be applied, as necessary, to the repair, restoration and replacement of the Property so such Property (including the Equipment) shall have a value, utility, condition, operating function and remaining useful life to the value, utility, condition, operating function and remaining useful life existing immediately prior to such Casualty or Condemnation (assuming compliance with this Lease). Any excess insurance proceeds remaining thereafter shall be retained by Lessee and any excess condemnation award remaining thereafter shall be paid to Lessor to be applied to reduce the Indebtedness.

Section 12.04. Other Dispositions.

(a) If Net Casualty Proceeds or Net Condemnation Proceeds exceed \$500,000.00 (each, as applicable, the "Restoration Fund") in respect of such Casualty or Condemnation, as the case may be, then all Net Casualty Proceeds or Net Condemnation Proceeds shall be paid to the Proceeds Trustee for release to Lessee as restoration progresses, subject to and in accordance with Section 12.04(b). Lessor and Lessee hereby authorize and direct any insurer, to make payment under policies of casualty insurance required to be maintained by Lessee pursuant to Section 9.01(a) directly to the Proceeds Trustee instead of to Lessor; and each of Lessee and Lessor hereby appoints the Proceeds Trustee as its attorney-in-fact to endorse any draft therefor for the purposes set forth in this Lease. In the event that a Casualty shall occur at such time as Lessee is self-insured (as permitted above) by means of deductibles, retained risks or no insurance where Net Casualty Proceeds would have exceeded \$500,000.00 from a third-party insurer under a customary commercial all-risk full replacement-value insurance policy substantially similar to that described in Schedule 9.01, Lessee shall, within thirty (30) days of



the Casualty, pay to the Proceeds Trustee the amount of the proceeds that would have been payable had such insurance been in effect (determined in the manner provided in the fourth full paragraph of Section 12.01) and such amount shall constitute a part of the Restoration Fund for all purposes hereof. Notwithstanding the foregoing provisions of this Article XII, so long as a Lease Event of Default exists or a Lease Default shall have occurred and be continuing, any amount that would otherwise be payable to or for the account of Lessee pursuant to this Article XII shall be paid to the Servicer (if a Servicer has been and continues to be engaged to receive Rent) as security for the obligations of Lessee under this Lease and at such time thereafter as the Lease Event of Default shall have been waived and the Lease Default shall no longer be continuing, unless Lessor shall be exercising its remedies under Section 17.01, such amount shall be paid promptly to Lessee or the Proceeds Trustee in accordance with this Lease.

(b) The Restoration Fund, if any, shall be disbursed by the Proceeds Trustee by wire transfer of immediately available funds within five (5) Business Days of the last submission made pursuant to and in accordance with the following conditions (provided that there shall be no more than one disbursement during each month):

(i) At the time of any disbursement, no Lease Event of Default exists and no Lease Default shall have occurred and be continuing and no mechanics' or materialmen's liens shall have been filed and remain undischarged, unbonded or not insured over.

(ii) Disbursements (subject to the holdback in Section 12.04(b)(iv) below) shall be made from time to time in an amount not exceeding the hard and soft costs of the work and costs incurred since the last disbursement upon receipt of (1) satisfactory evidence, including architects' or engineers' certificates, of the stage of completion, of the estimated cost of completion and of performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications, (2) partial releases of liens in respect of the disbursement made pursuant to the immediately preceding request, and (3) other reasonable evidence of costs incurred (whether or not paid) so that the Proceeds Trustee is able to verify that the amounts disbursed from time to time are represented by work that is completed in place or delivered to the site and free and clear of (or such claims have been bonded or insured over), mechanics' and materialmen's lien claims.

(iii) Each request for disbursement shall be accompanied by a certificate of Lessee (1) agreeing to use amounts disbursed for the costs described in Section 12.04(b)(ii), (2) describing the work, materials or other costs or expenses for which payment is requested, (3) stating the costs incurred in connection therewith, (4) to the extent Lessee has not paid amounts equal to self-insured retentions to the Proceeds Trustee, stating that Lessee has paid costs and expenses for such work in an amount equal to the self insured and/or deductible amounts (and attaching thereto evidence thereof reasonable satisfactory to Lessor) and (5) stating that Lessee has not previously received payment for such work or expense and the certificate to be delivered by Lessee upon completion of the work shall, in addition, state that the work has been substantially completed and complies with the applicable requirements of this Lease.

(iv) The Proceeds Trustee shall retain ten percent (10%) of the amounts otherwise disburseable until the repair, restoration and replacement are at least fifty percent (50%) complete, and thereafter five percent (5%) until the repair, restoration and replacement are substantially complete.

(v) The Restoration Fund shall be kept by the Proceeds Trustee in a separate interest-bearing federally insured account or invested in Permitted Investments (as directed by, or on behalf of, Lessee).

(vi) At all times the undisbursed balance of the Restoration Fund held by the Proceeds Trustee shall be not less than the cost of completing the repair, restoration and replacement, free and clear of all liens (other than Permitted Liens, which term for purposes hereof shall exclude Liens of the type described in clause (d) of the definition of Permitted Liens other than Liens for amounts not yet due or that are bonded over or insured over), and in the case of any deficiency, the Lessee shall be required to deposit an amount equal to such deficiency into the Restoration Fund.

(vii) In addition, prior to commencement of repair, restoration and replacement and at any time during such repair, restoration and replacement, if the estimated cost of repair, restoration and replacement, as reasonably determined by the Proceeds Trustee, exceeds the then amount of the Restoration Fund, the amount of such excess shall be paid by Lessee to the Proceeds Trustee to be added to the Restoration Fund or Lessee shall fund at its own expense the costs of such repair, restoration and replacement until the remaining Restoration Fund is sufficient for the completion of the repair, restoration and replacement. In the case of Casualty, any sum in the Restoration Fund which remains in the Restoration Fund upon the completion of repair, restoration and replacement shall be paid to Lessee. In the case of Condemnation, any sum in the Restoration Fund which remains in the Restoration Fund upon the completion of repair, restoration and replacement shall be paid to Lessor. Lessor shall use such remaining sum to reduce the Indebtedness, if any.

The Proceeds Trustee shall be retained at the cost, expense and risk of the Lessee.

#### Section 12.05. Negotiations.

In the event the Property becomes subject to Condemnation or requisition proceedings, Lessee shall control the negotiations with the relevant Governmental Authority, unless: (i) a Lease Event of Default exists or a Lease Default shall have occurred and be continuing, or (ii) the Net Condemnation Proceeds will likely be in excess of \$500,000.00 (which determination shall be made in Lessor's reasonable discretion), in which case Lessor (or if the Debt Documents are in effect, the Agent) at Lessee's expense may elect in writing to control such negotiations; provided that in any event Lessor may elect to participate at Lessee's expense in such negotiations. Lessee shall give to Lessor such information, and copies of such documents, which relate to such proceedings and are in the possession of Lessee, as are reasonably requested by Lessor. Lessor shall use good faith efforts to be reasonable when incurring expenses payable by Lessee hereunder and shall confer with Lessee as to any negotiations with Governmental Authorities material to Lessee's operations. Notwithstanding the foregoing, in jurisdictions

where a separate award may be granted for Lessee's Equipment and Personalty, moving and relocation expenses, business loss, business damages, loss of goodwill, unamortized costs of any Alterations title for which has not vested in Lessor or Head Lessor pursuant to the terms of this Lease, and Lessee's attorneys' fees, costs and expenses in the proceedings, Lessee may assert claims for and control the negotiations pertaining to such interests; provided that the Lessor's award in respect to the Property is not diminished by the award to Lessee. Similarly, and notwithstanding the foregoing, in jurisdictions where a separate award may be granted for any portion of the Equipment, Head Lessor may assert claims for and control the negotiations pertaining to such interests; provided that the Lessor's award in respect to the Property is not diminished by the award to Head Lessor; provided, further, if a Lease Event of Default exists or a Lease Default shall have occurred and be continuing, such award shall be paid to the Proceeds Trustee to be applied as set forth in the Intercreditor Agreement.

### **ARTICLE XIII**

#### **CONVEYANCE OF PROPERTY TO LESSEE**

Section 13.01. Conveyance of Property to Lessee.

Upon the purchase of Lessor's rights in the Property by Lessee pursuant to Article XII or Section 17.04, Lessor shall convey to Lessee or its designee (x) such Property "as-is," "where-is" and in then present physical condition by a limited warranty deed with a warranty against grantor's acts and a bill of sale with respect to the Equipment and (y) all rights, title and interest of Lessor in and to any Net Proceeds (if any), with respect to the Property, free and clear of (i) all Lessor Liens arising under the Lessor but with no other representation or warranty of any kind and (ii) the Liens created by the Debt Documents and the Head Lease.

### **ARTICLE XIV**

#### **SUBLEASE**

Section 14.01. Subleasing Permitted; Lessee Remains Obligated.

Provided that no Lease Event of Default exists and no Lease Default shall have occurred and be continuing at the time the sublease is entered into, upon ten (10) days' prior written notice to Lessor, Lessee may at any time and from time to time sublease all or any portion of the Property to one or more Persons or permit the occupancy of the Property or any portion or portions thereof by one or more Persons; provided, that each such Person must not be (i) a tax-exempt entity (within the meaning of Section 168(h) of the Code) or (ii) a debtor or debtor-in-possession in a voluntary or involuntary bankruptcy proceeding at the commencement of the Sublease (defined below) term; provided, further, there shall be no more than five (5) Subleases permitting occupancy by Persons other than the Lessee at any time, and no Sublease shall result in any structural alteration or modification to the Property or any portion thereof. Any such sublease, sub-sublease, license, occupancy agreement or similar agreement (each, a "Sublease") shall not release Lessee from its primary liability for the performance of its duties and obligations hereunder, and Lessee shall continue to be obligated for all obligations of "Lessee" in this Lease, which obligations shall continue in full effect as obligations of a principal

and not a guarantor or surety, as though no Sublease had been made. Lessee shall furnish to Lessor within thirty (30) days after the execution of each Sublease

(i) a copy of such Sublease (and the previously executed Subleases still in effect, if applicable) and (ii) such other instruments and documents as the Lessor shall reasonably request to ensure that such Sublease is expressly subject and subordinate to the Debt Documents, the Lease and the Head Lease and meets the requirements hereof.

#### Section 14.02. Provisions of Subleases.

Each Sublease shall:

- (a) be expressly subject and subordinate to this Lease, any mortgage encumbering the Property and the Head Lease;
- (b) not extend beyond the Lease Term minus one day;
- (c) not conflict with or result in a conflict with or violation of any provision of the Lease, any Debt Documents or the Head Lease; and
- (d) the sublessee shall be bound by all covenants contained in Sections 8.01, 8.02 and 8.05 with respect to subleased premises to the same extent as if the sublessee were the Lessee.

Any Sublease shall not have any term or provision that conflicts with any term or provision hereof or any other Operative Document and, to the extent that such Sublease has obligations not in conflict with, but different from, the obligations of Lessee hereunder, such sublease must establish an arrangement to permit the obligations of Lessee hereunder to be fulfilled in a manner reasonably acceptable to Lessor.

## **ARTICLE XV**

### **INSPECTION**

#### Section 15.01. Inspection.

Upon three (3) days prior written notice to Lessee (or promptly after notice (which may be by telephone or facsimile transmission) if a Lease Default or Lease Event of Default shall exist) Lessor, Agent, each Holder, FSL Group and Head Lessor, and their respective representatives and agents (each, an "Inspecting Party"), may, in a commercially reasonable manner, inspect the Property, including, without limitation, the right to cause consultants to make structural, environmental (to the extent necessary to verify compliance with the provisions of this Lease) and/or other inspections or tests (it being understood that all Subleases shall provide for such inspection rights by the Inspecting Parties). The Inspecting Party shall minimize damage and repair any damage caused by any inspection or test performed pursuant to Section 15.01. All such inspections and tests shall be at the Inspecting Party's expense, unless (i) a Lease Event of Default exists or a Lease Default shall have occurred and be continuing or (ii) such inspection and/or test results establish that Lessee is required to take any action in order to comply with the Lease. In either such case, the cost of such inspection and/or test shall be promptly paid by Lessee no later than thirty (30) days from the date of invoice. Further, upon

prior notice to Lessee, each Inspecting Party, at its expense, may inspect the books and records relating to the maintenance and care of the Property during the term of this Lease, that are in the possession of Lessee, which shall be made available at the Property or the headquarters of the Lessee. Except in connection with any inspection or test during the existence of a Lease Default or Lease Event of Default, each Participant agrees to conduct any inspection or test in a manner that will minimize interference with the business and operations conducted by Lessee on the Property, and any such inspection or test (other than during the existence of a Lease Default or Lease Event of Default) shall be conducted during normal business hours.

## **ARTICLE XVI**

### **LEASE EVENTS OF DEFAULT**

Section 16.01. Lease Events of Default.

The following events shall constitute a "Lease Event of Default":

- (a) Lessee shall fail to make any payment of Interim Rent, Base Rent or Renewal Rent or Termination Value within three (3) days of the date when due;
- (b) Lessee shall fail to make any payment of Supplemental Rent when due and such failure shall continue for five (5) days;
- (c) Lessee shall fail to make any payment required under any other Operative Document, other than any amount described in clause (a) or clause (b) of this Article XVI, and such failure shall continue for a period of ten (10) days after notice of such failure to Lessee from Lessor or other Person to whom Lessee is required to make such payment;
- (d) Lessee shall fail to timely perform or observe any covenant or agreement (other than any covenant or agreement whereby the breach thereof constitutes a Lease Event of Default under any other provision of this Section 16.01) to be performed or observed by it hereunder or under any other Operative Document to which it is a party and such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor, the Agent or the Head Lessor; provided that the continuation of such a failure for thirty (30) days after such notice shall not constitute a Lease Event of Default up to an additional thirty (30) days so long as such failure cannot reasonably be cured within such thirty (30) day period, and Lessee shall be diligently and continuously prosecuting the cure of such failure and shall have advised the Lessor in writing of the steps it is taking and will take to remedy such Lease Default. The parties hereto acknowledge that the foregoing cure period shall not be construed to limit the period set forth in Section 8.05 afforded to Lessee thereunder to take any required Remedial Action and obtain Final Governmental Approval;
- (e) except to the extent the Lessee is permitted to self-insure pursuant to Section 9.01 and Schedule 9.01, Lessee shall fail to carry or maintain in full force any insurance required hereunder;

(f) any representation or warranty made by Lessee herein or in any Operative Document to which Lessee is a party or delivered in connection with the foregoing shall prove to have been incorrect in any material respect when such representation or warranty was made;

(g) (A) Lessee makes any general arrangement or assignment for the benefit of creditors; (B) Lessee becomes a "debtor" as defined in 11 U.S.C. ss. 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (C) the appointment of a trustee or receiver to take possession of substantially all of the assets of Lessee where possession is not restored to Lessee within sixty (60) days; or (D) the attachment, execution or other judicial seizure of substantially all of the assets of Lessee where such seizure is not discharged within sixty (60) days; or

(h) Lessee shall have assigned or otherwise transferred its right, title and interest in and to this Lease, or subleased the Property, in violation of Article XI or Section 14.01, as the case may be.

## **ARTICLE XVII ENFORCEMENT**

### Section 17.01. Remedies.

Upon the occurrence of any Lease Event of Default and at any time thereafter, Lessor may, at its option, by notice to Lessee do one or more of the following as Lessor in its sole discretion shall determine:

(a) Lessor may, by notice to Lessee, terminate this Lease as of the date specified in such notice; provided (i) no reletting, reentry or taking of possession of any or all of the Property by Lessor will be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee, (ii) notwithstanding any reletting, reentry or taking of possession, Lessor may at any time thereafter elect to terminate this Lease with respect to any or all of the Property, and (iii) no act or thing done by Lessor or any of its agents, representatives or employees and no agreement accepting a surrender of any or all of the Property shall be valid unless the same be made in writing and executed by Lessor;

(b) Lessor may (i) demand that Lessee, and Lessee shall upon the written demand of Lessor, return the Property promptly to Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of, Article X as if the Property were being returned at the end of the Lease Term, and Lessor shall not be liable for the reimbursement of Lessee for any costs and expenses incurred by Lessee in connection therewith, and (ii) without prejudice to any other remedy which Lessor may have for possession of the Property, enter upon the Property and take immediate possession of (to the exclusion of Lessee and any sublessee) the Property and expel or remove Lessee and any other Person who may be occupying the same, by summary proceedings or otherwise, all without liability to Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise and in addition to Lessor's other damages. Lessee shall be responsible for the reasonably necessary costs and expenses of reletting actually incurred. The provisions of this

Section 17.01(b) shall operate as a notice to quit and shall be deemed to satisfy any other requirement or provisions of Applicable Laws which may require Lessor to provide a notice to quit or of Lessor's intention to re-enter any or all of the Property and any such requirements or provisions are hereby waived by Lessee. Whether or not the Lease is terminated, Lessor shall be entitled to enter the Property and may remove the Equipment;

(c) Lessor may hold, keep idle or lease to others the Property as Lessor in its sole discretion may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect to such action or inaction;

(d) Lessor may sell the Property (or any portion thereof) at public or private sale, as Lessor may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or any proceeds with respect thereto (except to the extent required by the next succeeding sentence if Lessor shall elect to exercise its rights thereunder), in which event Lessee's obligation to pay Base Rent or Renewal Rent, as the case may be, hereunder for periods commencing after the Termination Value Date next succeeding the date of such sale shall be terminated. If Lessor shall have sold any of the Property pursuant to the above terms of this Section 17.01(d), Lessor may demand that Lessee pay to Lessor, and Lessee shall pay to Lessor as Supplemental Rent, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (the parties agreeing that Lessor's actual damages would be difficult to predict, but the liquidated damages described below represent a reasonable approximation of such amount), in lieu of Base Rent (or Renewal Rent, as the case may be) in respect of the Property due for the period commencing on the Termination Value Date next succeeding the date of sale, an amount equal to (i) all unpaid Rent due on or prior to, and (without duplication) all unpaid Rent accruing but unpaid through, such Termination Value Date, plus (ii) an amount equal to the excess, if any, of (I) the Termination Value for the Property (or allocable portion thereof) determined as of the Termination Value Date next succeeding the date of sale plus any Make-Whole Premium over (II) the net proceeds of such sale (after deduction of all costs and expenses of such sale including, without limitation, sales or transfer taxes, recording fees and stamp and documentary taxes, costs incurred to ready the Property for sale and brokers' and attorneys' fees), plus (iii) interest at the Default Rate on all of the foregoing amounts from such Termination Value Date until the date of actual payment;

(e) Lessor may, whether or not Lessor shall have exercised or shall thereafter at any time exercise any of its rights under Section 17.01(a), (b) or

(c), demand by written notice to Lessee specifying a payment date (the "Final Payment Date") not earlier than twenty (20) days after the date of such notice, that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the Final Payment Date, as liquidated damages for loss of a bargain and not as a penalty (the parties agreeing that Lessor's actual damages would be difficult to predict, but the aforementioned liquidated damages represent a reasonable approximation of such amount), in lieu of Base Rent for periods commencing after the Final Payment Date, an amount equal to the sum of (i) all unpaid Rent with respect to the Property due on or prior to, and (without duplication) all unpaid Rent accruing but unpaid through, such Termination Value Date plus (ii) the following (together with interest on such sum at the Default Rate from the Final Payment Date specified in such notice to the date of actual payment): an amount equal to the excess, if any, of the Termination Value for the Property (or allocable portion thereof) determined as of the Termination Value

Date next succeeding the Final Payment Date plus any Make-Whole Premium over, at the Lessor's option, the Fair Market Sales Value or Fair Market Rental Value (determined on an "as-is," "where-is" basis and, in the event of any dispute, based upon an appraisal prepared by an appraiser selected by Lessor) for the Property (or allocable portion thereof), and in the case of Fair Market Rental Value determined over the remainder of the Base Term after discounting such Fair Market Rental Value to the present value as of such Final Payment Date at the Reference Rate.

(f) Lessor may retain and apply against Lessor's damages all sums which Lessor would, absent such Lease Event of Default, be required to pay to, or turn over to, Lessee pursuant to the terms of this Lease;

(g) Lessor may exercise any other right or remedy that may be available to it under Applicable Laws or in equity, or proceed by appropriate court action (legal or equitable) to enforce the terms hereof or to recover damages for the breach hereof. Separate suits may be brought to collect any such damages for any period or periods with respect to which Rent shall have accrued, and such suits shall not in any manner prejudice Lessor's right to collect any such damages for any subsequent period, or Lessor may defer any such suit until after the expiration of the Base Term or the then current Renewal Term, in which event such suit shall be deemed not to have accrued until the expiration of the Base Term, or the then current Renewal Term.

#### Section 17.02. Survival of Lessee's Obligations.

No repossession of any or all of the Property or exercise of any remedy under this Lease, including termination of this Lease, shall, except as specifically provided herein, relieve Lessee of any of its liabilities and obligations hereunder, including the obligation to pay Rent. In addition, except as specifically provided herein, Lessee shall be liable for any and all unpaid Rent due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and expenses and other costs and expenses incurred by any Participant by reason of the occurrence of any Lease Default or Lease Event of Default or the exercise of Lessor's remedies with respect thereto, and including all costs and expenses incurred in connection with the return of the Property in the manner and condition required by, and otherwise in accordance with the provisions of, Article X as if the Property were being returned at the end of the Lease Term. At any sale of any or all of the Property or any other rights pursuant to Section 17.01, any Participant (excluding the Lessor in the case of any event of default by the Lessor under the Debt Documents not arising from a Lease Event of Default) or Affiliate thereof may bid for and purchase the Property or any portion thereof.

#### Section 17.03. Remedies Cumulative; No Waiver; Consents.

To the extent permitted by, and subject to the mandatory requirements of, Applicable Laws, each and every right, power and remedy herein specifically given to Lessor (and any assignee) or otherwise in this Lease shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Lessor, and the exercise or the beginning of the exercise of any power or



remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy; provided, however, Lessor shall not be entitled to duplicative damages in the case of the cumulative exercise of remedies. No delay or omission by Lessor in the exercise of any right, power or remedy or in the pursuit of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of Lessee or to be an acquiescence therein. Lessor's (or any other Person's) consent to any request made by Lessee shall not be deemed to constitute or preclude the necessity for obtaining Lessor's (or such other Person's) consent, in the future, to all similar requests. No express or implied waiver by Lessor of any Lease Default or Lease Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Lease Default or Lease Event of Default.

#### Section 17.04. Lessee's Right of Rejectable Offer.

Upon the occurrence and during the continuance of a Lease Event of Default (but so long as no Lease Event of Default shall have occurred under Section 16.01(g)), Lessee shall have the right for a period equal to ten (10) days from the date of Lessee's knowledge of such Lease Event of Default to offer to buy the Property from the Lessor for an amount equal to the greater of the Fair Market Sales Value thereof (determined on an "as is," "where is" basis, and in the event of any dispute, based upon an appraisal prepared by an appraiser selected by Lessor) or Termination Value, together with any Make-Whole Premium. In the event that Lessor accepts such offer within fifteen (15) Business Days of receipt of the offer (or Lessor is deemed to have accepted such offer), Lessee shall be required to pay the purchase price as set forth above, together with all unpaid Rent due on or prior to, and (without duplication) all unpaid Rent accruing but unpaid through the date the purchase price is paid and interest at the Default Rate on the foregoing amounts until the date of actual payment together with other amounts owing by the Lessee under the Operative Documents and all costs and expenses attendant to any Lease Event of Default. Notwithstanding anything herein to the contrary, if such offer shall not have been rejected within the fifteen (15) Business Days referenced above then such offer shall be deemed to have been accepted by Lessor and the provisions of Section 13.01 shall apply without further action unless the Lessee and Lessor shall have otherwise agreed in writing that such offer shall not be deemed to have been accepted and shall continue for an additional period, which period shall be specified by such parties.

If Lessor elects to reject the offer of Lessee hereunder to purchase the Property pursuant to this Section 17.04 while the Indebtedness under the Debt Documents is outstanding or the Head Lease has not expired by its terms or otherwise been terminated, any notice of rejection shall only be effective, and Lessor shall only be entitled to reject such offer, if such notice is concurrently consented to in writing by the Agent on behalf of the Holders or by the Head Lessor or both the Agent and the Head Lessor, as the case may be, and absent such required consent by the applicable Persons within the time period prescribed herein, Lessor shall be deemed to have accepted Lessee's offer.

## **ARTICLE XVIII**

### **RIGHT TO PERFORM FOR LESSEE**

#### Section 18.01. Right to Perform for Lessee.

If Lessee shall fail to perform or comply with any of its agreements contained herein within the applicable periods permitted herein prior to such failure to perform or comply constituting a Lease Default or Lease Event of Default, Lessor or Agent may (but shall not be required to) perform or comply with such agreement, and Lessor shall not thereby be deemed to have waived any default caused by such failure, and the amount of payment required to be made by Lessee hereunder and made by Lessor or Agent on behalf of Lessee, and the reasonable costs and expenses of Lessor and Agent (including reasonable attorneys' fees and expenses) incurred in connection with the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Default Rate, shall be deemed Supplemental Rent, payable by Lessee to Lessor or Agent upon demand. In addition, during the continuance of a Lease Default or Lease Event of Default in respect of Lessee's obligations under

Section 8.02 and/or Section 8.05, then, in addition to the rights above and at the cost of Lessee, (a) Lessor and Agent shall have the right to hire Persons (as selected by Lessor or Agent in its reasonable discretion) to cure such Lease Default or Lease Event of Default, and to take any and all other actions necessary to cure such Lease Default or Lease Event of Default, and (b) Lessee shall cooperate with Lessor and Agent, and the Persons hired by Lessor or Agent, in the performance of such cure, including, without limitation, (i) providing access to the subject Property at reasonable times every day of the week, (ii) making available water, electricity and other utilities existing at or on the subject Property, and (iii) restricting or closing the Property, but only if such restriction or closure is reasonably necessary for the performance of such cure and provided that such closure shall be done for and during a time period and in such manner that balances the need for the maintenance or repair of the Property (and doing so in a safe manner) and the continuing operations of the Property.

## **ARTICLE XIX**

### **INDEMNITIES**

#### Section 19.01. General Indemnification.

(a) Lessee agrees to assume liability for, and to indemnify, protect, defend, save and keep harmless each Indemnitee, on an After-Tax Basis, from and against any and all Claims that may be suffered, imposed on or asserted against any Indemnitee, arising out of (i) the acquisition, ownership, leasing, subleasing, assignment, transfer of title, sale, financing (including without limitation any Make-Whole Premium) refinancing, renewal, return, disposition, operation, possession, use, non-use, maintenance, modification, alteration, reconstruction, restoration, substitution or replacement of the Property (or any portion thereof) or the Lease, or from the granting by Lessor at Lessee's request of easements, licenses or any rights with respect to all or any part of the Property, or from the construction, design, purchase or condition of the Property (including any Claims arising, directly or indirectly, out of the actual or alleged presence, use, storage, generation, Release of any Hazardous Materials, and any Claims

for patent, trademark or copyright infringement and latent or other defects, whether or not discoverable), including any liability under Applicable Laws (including, without limitation, any Claims arising directly or indirectly out of any actual or alleged violation, now or hereafter existing, of any Environmental Laws), (ii) the Operative Documents or any modification, amendment or supplement thereto, (iii) the non-compliance of the Property with Applicable Laws (including because of the existence of the Permitted Liens or Permitted Encumbrances), (iv) any matter relating to all or any part of the Property or any operations thereon, including matters relating to Environmental Laws or Hazardous Materials, (v) the breach by Lessee of its representations, warranties, covenants and obligations in this Lease or any other Operative Documents whether or not such Claim arises or accrues prior to the date of this Lease, (vi) the business and activities of Lessee, (vii) the business and activities of any other Person on or about the Property (whether as an invitee, sublessee, licensee or otherwise), (viii) the cost of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of the Property or any surrounding areas for which Lessee has any legal obligation, the cost of any actions taken in response to a Release of any Hazardous Materials on, in, under or affecting any portion of the Property or any surrounding areas for which Lessee has any legal obligation to prevent or minimize such Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with Environmental Laws in connection with all or any portion of the Property or any surrounding areas for which Lessee has any legal obligation, and (ix) a Lease Default or Lease Event of Default (including Claims arising from such event's causing a default under the Head Lease or Debt Documents). Lessee acknowledges that the foregoing includes any costs incurred by any Indemnitee in performing any inspections of any Property if such inspection reveals a violation by Lessee of Section 8.05.

(b) In case any Claim shall be made or brought against any Indemnitee, such Indemnitee shall give prompt notice thereof to Lessee; provided that failure to so notify Lessee shall not reduce Lessee's obligations to indemnify any Indemnitee hereunder unless and only to the extent such failure results in additional liability on Lessee's part. Lessee shall be entitled, at its expense, acting through counsel selected by Lessee (and reasonably satisfactory to such Indemnitee), to participate in, or, except as otherwise provided, to assume and control (if it promptly so elects upon notice of the Claim), and, to the extent that Lessee desires to assume and control, in consultation with Indemnitee, the negotiation, litigation and/or settlement of any such Claim (subject to the provisions of the last sentence of subparagraph (c) of this Section 19.01). Such Indemnitee may (but shall not be obligated to) participate at its own expense (unless Lessee is not properly performing its obligations hereunder and then at the expense of Lessee) and with its own counsel in any proceeding conducted by Lessee in accordance with the foregoing, in which case Lessee shall keep such Indemnitee and its counsel fully informed of all proceedings and filings and afford such Indemnitee and counsel reasonable opportunity for comment. Notwithstanding the foregoing, Lessee shall not be entitled to assume and control the defense of any Claim if (i) a Lease Event of Default exists or a Lease Default has occurred and is continuing, (ii) the proceeding involves possible imposition of any criminal liability or penalty or unindemnified civil penalty on such Indemnitee, (iii) the proceeding involves the granting of injunctive relief against the Indemnitee not related to the transactions contemplated by the Operative Documents, (iv) a significant counterclaim is available to the Indemnitee that would not be available to and cannot be asserted by Lessee, (v) a conflict of interest exists between the

Indemnitee and Lessee with respect to the Claim, or (vi) the defense of such Claim would require the delivery of material confidential and proprietary information of such Indemnitee that would otherwise not be available to Lessee or its counsel.

(c) Each Indemnitee shall at Lessee's expense supply Lessee with such non-confidential and non-privileged information and documents reasonably requested by Lessee in connection with any Claim for which Lessee may be required to indemnify any Indemnitee under this Section 19.01 and otherwise necessary for the performance of its obligations hereunder. So long as no Lease Event of Default exists and no Lease Default shall have occurred and be continuing, no Indemnitee shall enter into any settlement or other compromise with respect to any Claim for which indemnification is required under this Section 19.01 without the prior written consent of Lessee which consent shall not be unreasonably withheld or delayed. Lessee shall have the authority to settle or compromise any Claim against an Indemnitee hereunder; provided that no admission of wrongdoing shall be required of such Indemnitee and such Indemnitee shall be released of all liability in connection with any such Claim pursuant to a release in form and substance acceptable to such Indemnitee.

(d) Upon payment in full of any Claim by Lessee pursuant to this Section 19.01 to or on behalf of an Indemnitee, Lessee, without any further action, shall be subrogated to any and all Claims that such Indemnitee may have relating thereto (other than claims in respect of insurance policies maintained by such Indemnitee at its own expense or claims against another Indemnitee for which Lessee would have indemnity obligations hereunder), and such Indemnitee shall execute such instruments of assignment and conveyance, evidence of Claims and payment and such other documents, instruments and agreements as may be necessary to preserve any such Claims and otherwise reasonably cooperate with Lessee to enable Lessee to pursue such Claims.

(e) Notwithstanding anything to the contrary contained herein, Lessee shall not be required to indemnify any Indemnitee under this Section 19.01 for any Claim to the extent resulting from the affirmative negligence (i.e., negligence arising from actions taken by such Indemnitee rather than resulting from such Indemnitee's failure to act), willful misconduct or breach in any material respect of a representation or warranty of such Indemnitee.

#### Section 19.02. General Tax Indemnification.

(a) Except as provided in Section 19.02(b), Lessee agrees to indemnify each Tax Indemnitee against, and hold each Tax Indemnitee harmless from, on an After-Tax Basis, and to pay in accordance with Section 19.02(f) (i) any and all Taxes of any United States federal taxing authority, state or political subdivision or taxing authority, thereof or therein which are imposed or levied upon or assessed against or with respect to or in connection with (A) any such Tax Indemnitee, the Lessee, any tenant, subtenant or other user of the Property, any Secured Note or any amounts and expenses payable thereunder, any financing or refinancing, in any case arising under, out of or in connection with or relating to the Operative Documents, the Property or any portion thereof or the transactions or activities contemplated by the Operative Documents, (B) the Property, or any part or interest therein, or any additions, modifications or improvements thereto, or any estate, right, title, or any occupancy, operation, possession of or sales from or any other activity conducted on or about the Property or any damage to, removal, abandonment, salvage, loss, condemnation, theft, scrapping, destruction of any requisition or taking thereof

(C) Interim Rent, Base Rent, Renewal Rent, Supplemental Rent or other sums payable under this Lease or any other Operative Document (including, in each case, any amendment, supplement, waiver or consent thereto), (D) this Lease or any other Operative Document (including, in each case, any amendment, supplement, waiver or consent thereto) or the leasehold estate hereby created or any interest therein, or which arise in respect of the operation, possession or use or disposition, after the acquisition thereof by a Tax Indemnitee, of all or any portion of the Property or any part thereof or interest therein, or which arise at the end of the Lease Term, if any, or (E) any leasing, subleasing, sub-subleasing or use of the Property or any part thereof or interest therein,

(ii) other governmental charges or Taxes imposed upon the Property or any part thereof or interest therein or upon a Tax Indemnitee as a result of ownership of the Property or any part thereof or interest therein (including, without limitation, sewer or water assessments), (iii) payments required to be made to a governmental or quasi-governmental authority (or private entity in lieu thereof) which are in lieu of each of the foregoing (whether or not expressly so designated) and (iv) any interest, penalties or additions to tax payable by the Tax Indemnitee in connection with any of the foregoing (any such amounts described in the foregoing clauses, being deemed to be a "Tax" for purposes of this Section 19.02).

(b) Notwithstanding anything to the contrary contained herein, Lessee will have no obligation under this Section 19.02 with respect to amounts described in any one or more of the following:

(i) in the case of any Tax Indemnitee, (A) Taxes (other than Taxes that are, or are in the nature of, sales, use, property, ad valorem, rental, stamp, transfer, ad valorem, excise or license taxes and other than any withholding tax arising from a change in Applicable Law after the Closing Date) imposed on the net income of such Tax Indemnitee by the United States federal government under the Code (including any taxes that are, or are in the nature of minimum or alternative minimum taxes, and any taxes on or measured by any items of tax preference), (B) Taxes (other than taxes that are, or are in the nature of, sales, use, property, ad valorem, rental, stamp, transfer, excise or license taxes and other than any withholding tax arising from a change in Applicable Law after the Closing Date) imposed on such Tax Indemnitee by the state in which the Property is located or any local jurisdiction therein on, based on or measured by net income (including any minimum taxes or taxes on items of tax preference) or net receipts or gross income or gross receipts, or taxes that are in the nature of intangibles taxes or (C) Taxes (other than taxes that are, or are in the nature of, sales, use, property, ad valorem, rental, stamp, transfer, excise or license taxes and other than any withholding tax arising from a change in Applicable Law after the Closing Date) imposed on such Tax Indemnitee by the state in which the Property is located or any local jurisdiction therein that are imposed on capital or net worth, excess profits or conduct of business, or (D) Taxes imposed by any foreign or domestic government or taxing authority (other than the United States or any states or any local government or taxing authority in any of the states), except in each case, to the extent imposed as a result of (v) the execution or delivery, of any Operative Document in such jurisdiction, (w) the identity, organization, activities or presence of the Lessee or any Affiliate of the Lessee in such jurisdiction, (x) the Lessee's or any Affiliate's of the Lessee making of any payment (or being deemed to have made payments) under the Operative Documents from the jurisdiction imposing such Taxes or (y) a change in Applicable Law after the Closing Date; provided that there

shall not be excluded under this clause (i) any amounts necessary to make any payment required to be made under the Operative Documents on an After-Tax Basis; provided further, that there shall not be excluded under this clause (i) any Taxes which are in lieu of or in replacement of any Taxes otherwise indemnified herein;

(ii) Taxes with respect to any Tax Indemnitee attributable to any (1) voluntary sale, assignment, transfer or other disposition (collectively, a "Transfer") by such Tax Indemnitee of any interest in the Property or any part thereof or any interest therein or any interests or obligations arising under the Operative Documents (other than to the Lessee, an Affiliate or any designee of the foregoing), (2) any involuntary transfer of any of the foregoing interests resulting from any bankruptcy or other proceeding for the relief of debtors in which such Tax Indemnitee is a debtor, (3) any foreclosure by a creditor of such Tax Indemnitee; provided, however, this clause (ii) shall not apply to any such sale, assignment, transfer or other disposition occurring as a result of and so long as a Lease Default or Lease Event of Default has occurred and is continuing (it being understood that any transfer or disposition expressly permitted by Articles XI, XIII or XIV of the Lease arising by operation of the Operative Documents or requested by the Lessee is not a voluntary sale, assignment, transfer or other disposition and any transfer in connection with a Casualty or Condemnation, an assignment, sublease or transfer by Lessee of any interest in the Property or merger, consolidation or other restructuring of Lessee or at the direction of Lessee shall not be deemed to be a voluntary sale, assignment, transfer or other disposition);

(iii) Taxes imposed against or payable by a Tax Indemnitee to the extent imposed with respect to any period after the expiration or earlier termination of this Lease (in either case provided that, if required, possession of the Property has been returned and the Lessee's obligation to pay Base Rent or Renewal Rent, as the case may be, under the Lease has been extinguished) other than pursuant to the exercise of remedies in connection with a Lease Default or Lease Event of Default; provided that the exclusion in this clause (iii) shall not apply to the extent such Taxes are imposed with respect to any payments due under the Operative Documents after such expiration or earlier termination;

(iv) Taxes imposed against or payable by such Tax Indemnitee as a result of the gross negligence, willful misconduct or fraud of such Tax Indemnitee;

(v) any Tax that would have been imposed on a particular Tax Indemnitee without regard to the transactions contemplated by the Operative Documents;

(vi) Taxes or liabilities resulting from any prohibited transaction described in Section 466 or 407 of ERISA or Section 4975(c) of the Code or any successor provisions thereto that may arise in connection with any transaction contemplated by the Operative Documents, other than any such Taxes that are imposed as a result of a breach of a representation by, or an act or omission of, the Lessee;

(vii) Taxes that would not have been imposed but for an amendment, supplement, modification, consent or waiver to any Operative Document to which Lessee

or any Affiliate thereof is not a party or that has not been initiated or consented to by Lessee or any Affiliate thereof in writing unless in each case (1) such amendment, supplement, modification, consent or waiver is required or permitted by the Operative Documents or Applicable Law, (2) is necessary or appropriate to, and is in conformity with any other amendment, supplement, modification, consent or waiver to any Operative Documents initiated, requested by or consented to by the Lessee or any Affiliate thereof in writing or (3) arises from a Lease Event of Default;

(viii) With respect to any Tax Indemnitee, Taxes resulting from or that would not have been imposed but for the existence of Lessor Liens arising under such Tax Indemnitee;

(ix) With respect to any Tax Indemnity, Taxes that could not have been imposed but for any failure of such Tax Indemnitee to comply with Section 19.02(h) hereof but only so long as such compliance would not expose such Tax Indemnitee (in the Tax Indemnitee's good faith opinion) to any cost or expense for which Lessee shall not have agreed to indemnify such Tax Indemnitee; provided, however, that the exclusion set forth in this clause

(xiv) shall not apply if such failure to comply is due to a failure of the Lessee to provide reasonable assistance or response in complying with such request.

(c) Reimbursement. If Lessee shall have paid any amount pursuant to the Lease or any other Operative Document or Applicable Laws with respect to or on account of Taxes not subject to indemnification pursuant to this Section 19.02, the Tax Indemnitee on whose behalf such Taxes were paid shall pay to Lessee within thirty (30) days (the "Reimbursement Date") of written notice of such payment by Lessee the amount so paid by Lessee (or Person making payment on behalf of Lessee), together with interest thereon at the Default Rate after the Reimbursement Date.

(d) Calculation of General Tax Indemnity Payments. Any payment or indemnity to or for the benefit of any Tax Indemnitee with respect to any Tax which is subject to indemnification under Section 19.02(a) shall (A) reflect the current net savings available to such Tax Indemnitee or any Affiliate thereof (computed at the highest marginal rates of federal, state and local tax then applicable to corporations) resulting from the current deduction of such indemnified Tax, but only to the extent that such indemnified Tax is deductible for federal, state and local tax purposes, and (B) include, after taking into account the savings described in clause (A), the amount necessary to hold such Tax Indemnitee harmless on an After-Tax Basis. If, by reason of any payment made to or for the account of a Tax Indemnitee by Lessee pursuant to Section 19.01 or this Section 19.02, or the event or circumstance giving rise to such payment, such Tax Indemnitee or any Affiliate thereof or any transferee, successor or assignee thereof, actually realizes a net tax benefit, savings, deduction or credit not taken into account in computing such payment; provided no Lease Default or Lease Event of Default has occurred and is continuing (in which case any amount payable to Lessee on account of such tax benefit, savings, deduction or credit shall not be due unless and until such Lease Default or Lease Event of Default is cured), such Tax Indemnitee shall promptly pay to Lessee an amount equal to the sum of (I) the net reduction in Taxes, if any, realized by such Tax Indemnitee or any Affiliate thereof which is attributable to such net tax benefit, savings, deduction or credit and (II) the net reduction in Taxes realized by such Tax Indemnitee or any Affiliate thereof as the result of

any payment made by such Tax Indemnatee pursuant to this sentence. Notwithstanding the foregoing, no Tax Indemnatee shall be required to make any payment to the Lessee pursuant to this Section 19.02(d) to the extent payments by the Tax Indemnatee to the Lessee under this Section 19.02(d) (without regard to amounts necessary to make such payments on an After-Tax Basis) would exceed, in the aggregate, at any time, the amount of all prior payments made by or on behalf of the Lessee to such Tax Indemnatee (without regard to amounts necessary to make such payments on an After-Tax Basis) less the amount of all prior payments made by the Tax Indemnatee to the Lessee (without regard to amounts necessary to make such payments on an After-Tax Basis) pursuant to this Section 19.02(d), but any such excess shall reduce pro tanto any amount (without regard to amounts necessary to make such payments on an After-Tax Basis) that the Lessee is subsequently obligated to pay such Tax Indemnatee pursuant to this Section 19.02.

(e) Contests. If any written claim shall be made against any Tax indemnatee or if any proceeding shall be commenced against any Tax Indemnatee (including a written notice of such proceeding) for any Taxes as to which Lessee may have an indemnity obligation pursuant to Section 19.02, such Tax Indemnatee shall promptly notify Lessee in writing and shall not take any action with respect to such claim or Tax without the consent of Lessee for thirty (30) days after sending such notice to Lessee; provided that, in the case of any such claim or proceeding, if such Tax Indemnatee shall be required by law or regulation to take action prior to the end of such 30-day period, such Tax Indemnatee shall, in such notice to Lessee, so inform Lessee, and such Tax Indemnatee shall not take any action with respect to such claim or Tax without the consent of Lessee (not to be unreasonably withheld) before ten (10) days from the receipt of such notice by Lessee unless the Tax Indemnatee shall be required by law or regulation to take action prior to the end of such 10 day period; provided, that failure to so notify Lessee shall not affect Lessee's obligations to indemnify hereunder except to the extent that Lessee is precluded from any contest and actually and materially harmed thereby. If requested by Lessee in a written request to such Tax Indemnatee within thirty (30) days (or such shorter period referred to in the proviso to the first sentence in this Section 19.02(e)) after its receipt of such notice, such Tax Indemnatee (i) in the case of a Tax which may be contested independently (without joinder, contribution or otherwise) from any Tax that is not subject to indemnification by the Lessee, shall permit Lessee to in good faith contest (including, without limitation, by pursuit of appeals and administrative procedures) (any such contest a "Lessee-Controlled Contest"), or (ii) in the case or a contest which is not a Lessee-Controlled Contest shall itself or, at such Tax Indemnatee's request, the Lessee shall, in good faith contest (including, without limitation, by pursuit of appeals and administrative procedures), the validity, applicability or amount of such Indemnified Taxes (A) by resisting payment thereof, (B) by not paying the same except under protest (which protest must be pursued using reasonable efforts in appropriate administrative and/or judicial proceedings) if protest shall be necessary and proper or (C) if payment shall be made, by using reasonable efforts to obtain a refund thereof in appropriate administrative and/or judicial proceedings; provided that in no event shall such Tax Indemnatee be required to contest any claim for any Tax unless (1) it is not a Lessee-Controlled Contest; (2) the amount at issue (taking into account all similar and logically related claims with respect to the transactions contemplated by the Operative Documents that have been or could have been raised in an audit by the taxing authority in question for any other taxable period with respect to which an assessment of a tax deficiency is not barred by a statute or limitations, including, without limitations, such claims



that may arise in future periods) exceeds \$25,000.00; (3) the Tax that is the subject of such contest is a Tax for which Lessee may have an indemnity obligation hereunder; (4) Lessee shall have agreed to pay such Tax Indemnitee and shall pay on an After-Tax Basis as incurred all reasonable costs and expenses that such Tax Indemnitee shall incur in connection with contesting such claim (including, without limitation, all reasonable costs, expenses, legal and accounting fees and disbursements); (5) the action to be taken will not result in any material danger of a sale, forfeiture or loss of, or the creation of any Lien against the Property (except if Lessee shall have adequately bonded such Lien (in a manner reasonably acceptable to such Tax Indemnitee) or otherwise made provision to protect the interests of such Tax Indemnitee and Lessor in the Property or any interest therein (in a manner reasonably acceptable to such Tax Indemnitee) and that there is no risk that criminal or unindemnified or punitive civil liability may be imposed with respect to such Tax Indemnitee; (6) if such contest shall involve payment of the claim, Lessee shall advance the amount thereof plus interest, penalties and additions to tax with respect thereto to such Tax Indemnitee on an interest-free basis (with no additional net after tax cost to such Tax Indemnitee and without taking into account any net tax savings associated with such advance); (7) no Lease Default or Lease Event of Default under this Lease shall have occurred and be continuing (it being agreed that in such case, the Tax Indemnitee shall consult in good faith with Lessee to determine whether Lessee can provide to the Tax Indemnitee reasonably satisfactory security to cover its indemnity obligations with respect to amounts to be contested and its obligations under the foregoing clause (4) of this proviso, in which case, such Event of Default shall not deprive Lessee of its contest rights hereunder); and (8) in the case of a contest which must be contested in the name of the Tax Indemnitee, prior to initiating the contest the Lessee shall have furnished the Tax Indemnitee with an opinion of an independent tax advisor selected by the Lessee and reasonably acceptable to the Tax Indemnitee ("Tax Counsel") to the effect that a reasonable basis exists for such contest. In no event shall the Tax Indemnitee be required to contest any claim required to be brought in its own name if the subject matter of such claim shall be of a continuing nature and shall have previously been the subject of an adverse final determination under the contest provisions of this Section 19.02(e), unless the Lessee shall have delivered to such Tax Indemnitee an opinion of Tax Counsel to the effect that as a result of a change in law or fact it is more likely than not that the Tax Indemnitee will prevail in the contest of such claim. Notwithstanding anything herein to the contrary, no Tax Indemnitee shall be required to provide to Lessee or its counsel any confidential information regarding its or any Affiliate's federal or state income tax reporting, and, in no event shall any contest related to federal, state or local income taxes of any Tax Indemnitee be subject to a Lessee-Controlled Contest unless requested by such Tax Indemnitee.

Lessee shall conduct any Lessee-Controlled Contest and the relevant Tax Indemnitee shall control any contest other than a Lessee-Controlled Contest, unless the Tax Indemnitee requests that the Lessee control such contest or declines in writing to control such contest. The party conducting the contest ("Controlling Party") shall consult in good faith with the other party ("Noncontrolling Party") and its counsel with respect to the contest of such claim for Taxes (or claim for refund) and shall permit review and comment on any material filings or other submissions (in the case of any Tax Indemnitee controlled contest so long as such filing or submission does not relate to any other contest of such Tax Indemnitee that is not subject to indemnity hereunder unless the portion of the filing or submission relating to such other contest can be readily severed from the portion of the filing or submission to be disclosed) but the

decisions regarding all actions to be taken shall be made by the Controlling Party in its sole judgment (exercised in good faith). In addition, the Controlling Party shall keep the Noncontrolling Party reasonably informed as to the progress of the contest. The Controlling Party shall be responsible for the selection of counsel, which counsel must be reasonably satisfactory to the Noncontrolling Party.

Notwithstanding anything contained in this Section 19.02, a Tax Indemnitee shall not be required to contest any claim or permit Lessee to contest any claim and may settle any contest without the consent of Lessee if such Tax Indemnitee (A) shall waive its right to indemnity under this Section 19.02 with respect to such claim for such Tax (and any claim made by any taxing authority with respect to other taxable periods that is based upon the resolution of such claim, or the contest of which is materially prejudiced by the resolution of such claim), and (B) shall pay to Lessee any amount of Tax previously paid or advanced by Lessee pursuant to this Section 19.02 other than the costs and expenses of the contest of such claim paid by the Lessee in accordance with clause (x) of the proviso to the second preceding paragraph, together with interest thereon at the Applicable Federal Rate for the period such payments or advances were held.

If any Tax Indemnitee or any Affiliate thereof shall obtain a refund (including by way of credit) of all or any part of any Tax with respect to which the Lessee shall have paid on behalf of such Tax Indemnitee or reimbursed such Tax Indemnitee, then such Tax Indemnitee shall, so long as no Lease Default or Lease Event of Default shall have occurred and be continuing, pay to the Lessee any such refund (including any applicable interest received with respect to such refund or that would have been received with respect to such refund but for a counterclaim or other claim not indemnified by Lessee hereunder) plus any tax savings realized by such Tax Indemnitee as a result of a payment pursuant to this sentence (it being understood that the calculation of such tax savings shall take into account any additional income Taxes incurred by such Tax Indemnitee as a result of the receipt or accrual of such refund). A Tax Indemnitee shall not be obligated pursuant to this Section 19.02(e) to make a payment (i) before such time as the Lessee shall have made all payments then due under the Operative Documents and any Lease Default or Lease Event of Default that shall have occurred shall no longer be continuing or (ii) in excess of the amounts paid by Lessee to such Tax Indemnitee pursuant to this Section 19.02(e) in respect of the Taxes giving rise to such tax savings (minus any amounts previously paid to Lessee by such Tax Indemnitee pursuant to this Section 19.02(e) plus any applicable interest that would have been received with respect to such refund but for a counterclaim or other claim not indemnified by Lessee hereunder); provided that any such amounts not paid to Lessee pursuant to the limitation contained in clause (ii) of this sentence shall be carried forward to reduce, pro tanto, any future amounts that may become payable by the Lessee to such Tax Indemnitee pursuant to this Section 19.02(e) in respect of the Taxes giving rise to such tax savings. The disallowance, loss, recapture or reduction of any credit, refund or other tax savings with respect to which a Tax Indemnitee has made a payment to the Lessee under this Section 19.02(e) shall be treated as a Tax for which the Lessee is obligated to indemnify such Tax Indemnitee hereunder, without regard to the exclusions set forth in Section 19.02(b). The Tax Indemnitee shall make any payments to the Lessee under this Section 19.02(e) within thirty (30) days of the receipt of such refund.

(f) Payments. Any Taxes indemnified hereunder shall be paid by Lessee, to the extent allowed, directly to the appropriate taxing authority on or before the time, and in the manner, prescribed by Applicable Laws. Any amount payable to a Tax Indemnitee pursuant to this Section 19.02 shall be paid within thirty

(30) days after receipt of a written demand therefore from such Tax Indemnitee accompanied by a written statement describing in reasonable detail the amount so payable, but not before the date such Tax is due; provided, if any such amount is subject to contest hereunder, then such amount shall be paid within three (3) days of the resolution of the contest (or the earlier due date thereof). Any payments to be made by Lessee pursuant to this Section 19.02 that are not paid to the appropriate Governmental Authority shall be made directly to the Tax Indemnitee entitled thereto, and any payments to be made to Lessee pursuant to this Section 19.02 shall be made directly to Lessee, in each case in immediately payable funds at such bank or to such account as specified by the payee in written directions to the payor, or, if no such directions shall have been given, by check of the payor payable to the order of the payee and mailed to the payee by certified mail, postage prepaid at its address as set forth in this Lease. Any amount payable under this Section 19.02 that is not paid when due shall bear interest at the Default Rate.

(g) Verification. At Lessee's request, the amount of any indemnity payment by Lessee pursuant to this Section 19.02 or any payment by a Tax Indemnitee to Lessee pursuant to this Section 19.02 shall be verified by the certified public accountant who regularly prepares the tax returns for such Tax Indemnitee, who shall verify and certify in writing the accuracy of the Tax Indemnitee's computations. Notwithstanding the foregoing, Lessor may request verification by a separate nationally recognized United States or international accounting firm selected by the Tax Indemnitee and reasonably acceptable to Lessee. The person or persons required to perform such verification (the "Verifier") shall be asked to verify, after consulting with the Tax Indemnitee, whether the Tax Indemnitee's computations are correct and to report its conclusions to both Lessee and the Tax Indemnitee. Each Tax Indemnitee and Lessee hereby agrees to provide the Verifier with all information and materials as shall be reasonably necessary or desirable in connection therewith; provided, however, that in no case shall the Verifier or any other Person be entitled to see the tax returns or the books and records of the Tax Indemnitee other than necessary excerpts thereof with respect to which the Verifier or such other Person has agreed to treat as confidential under an agreement in form and substance acceptable to the Tax Indemnitee. The fee of such Verifier (if such Verifier is an independent accounting firm) shall be paid by Lessee unless such verification discloses an error adverse to Lessee of 10% or more of the amount determined by such Verifier, in which case such fees shall be paid by the applicable Tax Indemnitee. The Verifier shall be requested to make its determination within thirty (30) days of its appointment. In the event such Verifier shall determine that such computations are incorrect, then such Verifier shall determine what it believes to be the correct computations. Notwithstanding anything herein to the contrary, the sole responsibility of the Verifier shall be to verify the computations of the amount payable; interpretations of this Agreement or any other Operative Documents are not within the scope of such Verifier's responsibilities.

(h) Forms, etc. Each Tax Indemnitee agrees to furnish to Lessee from time to time, at the written request and expense of Lessee, such duly executed and properly completed forms as may be necessary or appropriate in order to claim any reduction of or exemption from any withholding or other Tax imposed by any taxing authority in respect of any payments otherwise

required to be made by Lessee, as the case may be, pursuant to this Lease, which reduction or exemption is available to such Tax Indemnitee; provided that no Tax Indemnitee shall have any obligation to comply with any request or take any other action pursuant to this Section 19.02(h) if in order to comply with such request or take such action the Tax Indemnitee would be required to make any inaccurate statement or would be exposed (in Tax Indemnitee's good faith opinion) to any cost or expense for which Lessee shall not have agreed to indemnify such Tax Indemnitee or would subject such Tax Indemnitee to any material risk of audit of Taxes not subject to indemnity hereunder.

(i) Non-Parties. If any Tax Indemnitee is not a party to this Lease, Lessee may require the Tax Indemnitee, before making any payment to such Tax Indemnitee under this Section 19.02, to provide the Lessee in writing with an agreement executed by the Tax Indemnitee, as follows:

In consideration of the rights of the undersigned to payments from the Lessee pursuant to Section 19.02 of the Lease Agreement, dated as of June 1, 2000, between the Lessor thereof and the Lessee thereof, the undersigned hereby agrees and covenants that it is a "Tax Indemnitee" for the purposes of and shall be subject to the terms and conditions of Section 19.02 of the Lease and will make all payments and take such other actions as are required under Section 19.02 of the Lease.

(j) Filings. If any report, return or statement (a "Filing") is required to be filed with respect to any Tax that is subject to indemnification under this Section 19.02 and, Lessee shall promptly provide notice to the appropriate Tax Indemnitee and, if permitted by Applicable Laws to do so, Lessee shall timely file or cause to be filed such Filing with respect to such Tax (except for any such Filing that a Tax Indemnitee has notified Lessee in writing that such Tax Indemnitee intends to file a copy of which shall be promptly furnished to Lessee after filing) and will (if ownership of the Property or any part thereof or interest therein is required to be shown on such Filing) show the ownership of the Property in the name of Lessor or the Head Lessor, as the case may be, and send a copy of such Filing to the appropriate Tax Indemnitee, and Tax Indemnitee shall furnish Lessee, at Lessee's request, with such information, not within the control of Lessee, as is in such Tax Indemnitee's control or is reasonably available to such Tax Indemnitee and necessary to file such Filing; provided, however, Lessee shall pay all reasonable out-of-pocket expenses of the Tax Indemnitee in connection therewith. If Lessee is not permitted by Applicable Laws to file any such Filing, Lessee will promptly notify the appropriate Tax Indemnitee of such requirement in writing and prepare and deliver to the appropriate Tax Indemnitee a proposed form of such Filing within a reasonable time, and in all events at least fifteen (15) days prior to the time such Filing is required to be filed. In the case of any Filing either required to reflect items in addition to Taxes imposed on or indemnified against by the Lessee under this Section 19.02 or which the Tax Indemnitee has notified Lessee in writing that it will prepare and file, Lessee shall, upon the written request of such Tax Indemnitee, provide such Tax Indemnitee with such information as is within Lessee's reasonable control or access with respect to such Filing. Lessee shall hold each Tax Indemnitee harmless from and against any liabilities, including, but not limited to penalties, additions to tax, fines and interest, arising out of any insufficiency or inaccuracy in any such Filing, if such insufficiency or inaccuracy is attributable to Lessee. Lessee agrees to provide the Lessor with evidence of the

payment of all ad valorem property and other similar Taxes with respect to the Property or any portion thereof within thirty (30) days of the date that each such Tax shall become due.

#### Section 19.03 Special Tax Indemnity.

(a) Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants to each of Head Lessor and Lessor as follows: (i) under current law, neither the Property as a whole nor the Equipment constitutes "limited use property" within the meaning of Revenue Procedure 76-30, 1976-2C.B. 647; (ii) neither Lessee nor any Affiliate will claim any depreciation or cost recovery deductions with respect to the Property or any portion thereof, and has taken or will take any other action in connection with filing its or their federal income tax returns that would be a primary factor resulting in a Loss or Inclusion (in each case, as defined in Section 19.03(b) below); (iii) as of the Closing Date with respect to the (I) Improvements and Fixtures and (II) the Equipment, such property will not require any improvement, modification or addition in order to be rendered complete for its intended use by Lessee; (iv) all written information supplied, caused to be supplied or to be supplied to any appraiser by or on behalf of Lessee or any Affiliate of Lessee with respect to the Property or any portion thereof was or will be, as the case may be, true and accurate when supplied; and (v) at no time during the Term will the Property or any portion thereof constitute "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(b) Indemnity Payment Conditions. If, by reason of any act or omission of Lessee or by any other Person in possession of the Property or any portion thereof or by reason of the inaccuracy or breach by Lessee of any of the representations, warranties and covenants contained in this Section 19.03, any anticipated depreciation deductions are lost, disallowed, eliminated, reduced, recaptured, compromised, delayed or otherwise made unavailable to Lessor (or Head Lessor with respect to the Equipment), as the case may be, (a "Loss") or Lessor or Head Lessor incurs a tax detriment because it is required to include amounts in income other than Anticipated Lease Income (an "Inclusion"), Lessee shall, upon notice from Lessor or Head Lessor promptly pay such Person on demand in immediately available funds, as an indemnity an amount which, on an After-Tax Basis, shall be equal to the sum of (x) the increase in federal, state and local income tax liability for the respective taxable year attributable to such Loss or Inclusion plus (y) the amounts of interest, penalties and additions to tax (including, without limitation, any additions to tax because of underpayment of estimated tax), which are assessed against Lessor or Head Lessor for such taxable year by the Internal Revenue Service ("IRS") or any relevant state, local or foreign taxing authority and which are attributable to such Loss or Inclusion.

(c) Right to Contest. Lessor or Head Lessor (in each case, the "Tax Party") shall notify Lessee in writing of any actual or proposed claim, adjustment or other action of any tax authority received by such Tax Party in writing with respect to which Lessee may be required to provide indemnification under this

Section 19.03 ("Proposed Adjustment") (but failure of any Tax Party to so notify Lessee shall not relieve Lessee of its obligations hereunder except to the extent that Lessee is precluded from any contest and actually and materially harmed thereby). If Lessee shall request in writing within thirty (30) days after such Tax Party's notice described above that the Proposed Adjustment be contested (or such shorter period in which the Tax Party may be required to take action), such Tax Party shall contest the Proposed Adjustment; provided,

however, that: (i) prior to taking such action, Lessee shall have furnished such Tax Party with an opinion of independent tax advisor chosen by Lessee and reasonably acceptable to such Person, to the effect that such Person has a reasonable possibility of success in contesting the claim; (ii) prior to taking such action, Lessee shall have (A) acknowledged its obligation to indemnify such Tax Party hereunder in the event such Person does not prevail in such contest and (B) agreed to reimburse such Person, promptly on demand, all costs and expenses that such Person may incur in connection with contesting such claim, including without limitation reasonable attorneys' and accountants' fees and expenses; (iii) no Lease Event of Default shall exist and be continuing, (iv) such Person shall not be obligated to contest any proposed amount that is less than \$25,000.00; and (v) such Person shall in all events control the contest, and Lessee shall not have any right to inspect the books and records of such Person, but shall have reasonable opportunity to review and comment on portions of documentation, protests, memoranda or briefs relating exclusively to a Proposed Adjustment. In the event such Tax Party shall pay the tax claimed and then seek a refund, such Person may require Lessee to advance funds sufficient to pay the tax that would be indemnified by Lessee hereunder if the claim were resolved adversely to such Person, in which case, to the extent the refund claim is successful, such funds received from the taxing authority an attributable thereto, to the extent not required to be applied to an indemnity payable hereunder, shall be refunded to Lessee. Notwithstanding anything to the contrary in this Section 19.03(c) such Tax Party may at any time decline to take any further action with respect to a Proposed Adjustment or may settle any contest without the consent of Lessee; provided, however, that if Lessee shall have duly complied with all the terms of this Section 19.03 (c), and Lessee shall reasonably withhold in writing its consent to all or part of such assessment or settlement based upon its evaluation of the merits, Lessee shall not be obligated to indemnify such Tax Party for the portion of such assessment or settlement to which Lessee has reasonably withheld its consent.

(d) Consolidated Group. In the case of any flow-through entity, "Lessor" shall include the member or other equity owners of Lessor required to report the gross or net income of Lessor and/or other items of income, expense, deduction and credit with respect thereto, and "Lessor," "Head Lessor" and respective owners thereof shall include the consolidated group of which any such Person is a part for income tax purposes.

#### Section 19.04. Withholdings.

Notwithstanding anything herein to the contrary, Lessee agrees that each payment of Rent shall be free and clear of, and without deduction for any withholdings of any nature whatsoever unless required by Applicable Law. If any deduction or withholding is required with respect to a payment of Rent by Lessee, Lessee shall pay an additional amount such that the net amount actually received by the Tax Indemnitee, after deduction or withholding, will be equal on an After-Tax Basis to all such amounts that would be received by the Tax Indemnitee if no such deduction or withholding had been required; provided, that the Lessee shall not be obligated to pay any additional amount pursuant to this Section 19.04 if due to the failure of a Tax Indemnitee to comply with Section 19.02(b) to relief or exemption from such withholding tax on Rent.

Further, notwithstanding anything to the contrary contained, Lessee agrees that each payment under the Debt Documents and under the Head Lease shall be free and clear of, and

without deduction for, any withholdings of any nature whatsoever. If any deduction or withholding is required with respect to a payment under the Debt Documents or under the Head Lease, Lessee shall pay an additional amount such that the net amount actually received by the Tax Indemnatee, after deduction or withholding, will be equal on an After-Tax Basis to all such amounts that would be received by the Tax Indemnatee if no such deduction or withholding had been required; provided, that the Lessee shall not be obligated to pay any additional amount pursuant to this Section 19.04 if due to the failure of a Tax Indemnatee to comply with Section 19.02(h) as a precondition to relief or exemption from such withholding tax or deduction.

Section 19.05. Survival.

Notwithstanding anything herein to the contrary, the provisions of this Article XIX shall survive the earlier termination of this Lease and the right to collect any other payment that shall have occurred but shall be unpaid by the Lessor hereunder or under any Operative Document shall survive the earlier termination of this Lease and each other Operative Document.

## **ARTICLE XX**

### **LESSEE REPRESENTATIONS AND WARRANTIES**

Section 20.01. Representations and Warranties.

Lessee represents and warrants to Lessor and each Participant that the following are true and correct as of the date hereof:

(a) **Due Organization.** Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation. Lessee has the corporate power and authority to conduct its business as now conducted, to own or hold under lease its property and to enter into and perform its obligations under the Operative Documents to which it is or is to become a party, and the Lessee further has the authority to lease the Property under this Lease. Lessee is duly qualified to do business and is in good standing as a foreign corporation in the jurisdiction in which the Property is located and Lessee in each other jurisdiction where the failure to so qualify would have a material adverse effect on its ability to perform its obligations under the Operative Documents to which it is a party.

(b) **Due Authorization; No Conflict.** Each of the Operative Documents to which Lessee is a party has been duly authorized by all necessary corporate action on the part of Lessee and has been duly executed and delivered by Lessee, and the execution, delivery and performance thereof by Lessee will not, (i) require any approval of the stockholders of Lessee or any approval or consent of any trustee or holder of any indebtedness or obligation of Lessee, other than such consents and approvals as have been obtained, (ii) contravene any Applicable Law binding on Lessee or (iii) contravene or result in any breach of or constitute any default under Lessee's charter or by-laws or other organizational documents, or any indenture, judgment, order, mortgage, loan agreement, contract, partnership or joint venture agreement, lease or other agreement or instrument to which Lessee is a party or by which Lessee is bound,

or result in the creation of any Lien (other than pursuant to the Operative Documents) upon any of the property of Lessee.

(c) Governmental Actions. All Governmental Action and other consents, approvals, waivers, registrations, authorizations and other action required or necessary pursuant to any legal requirement or contract, indenture, instrument or agreement to which Lessee is a party or its property is bound in connection with the execution, delivery and performance by Lessee of the Operative Documents to which it is a party, has been obtained, given or made.

(d) Enforceability. Each of the Operative Documents to which Lessee is or is to become a party constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, moratorium, fraudulent conveyance, insolvency, equitable principles or other similar laws affecting the enforcement of creditors' rights in general.

(e) Investment Company. Lessee is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(f) Securities Act. None of Lessee, any Affiliate thereof or any agent of the foregoing has offered any interest in the Property or the Lease, or any securities of Lessee to, or solicited any offer to acquire any of the same from, any Person, in violation of Section 5 of the Securities Act, nor has it authorized any Person to take any such action, and none of Lessee, any Affiliate thereof or any agent of the foregoing has taken any action that would subject any interest in the Property, the Notes, the Lessor or the Lease to the registration requirements of Section 5 of the Securities Act. Nothing herein is intended to imply or shall be construed to suggest that the interests in Lessor constitute securities.

(g) Environmental Matters. Except as disclosed in the Environmental Reports and further described in Schedule 20.01(g), (i) Lessee has complied and is now complying in all material respects with all Environmental Laws, and no permits under Environmental Laws are required to mortgage, lease or transfer the Property or to operate the Property in the manner in which the Property is currently operated (other than permits that have already been issued and are in full force and effect or for which application has been submitted or will be submitted within 30 days of the Closing Date);

(ii) there are no known circumstances that may interfere in any material respect with Lessee's ability to operate and maintain the Property as contemplated by the Operative Documents in compliance with applicable Environmental Laws or that may give rise to any liability under applicable Environmental Laws; (iii) there are no pending or, to the Actual Knowledge of Lessee, threatened Claims against Lessee (with respect to the Property) or the Property itself with respect to Environmental Laws; (iv) during Lessee's occupancy of the Property there have been no known Releases on or from the Property in violation of applicable Environmental Laws and such Property is, to the Actual Knowledge of Lessee, free from all contamination in material violation of Environmental Laws arising from, relative to, or resulting from any Hazardous Materials; (v) to Lessee's knowledge after due inquiry, there are not now any underground storage tanks or incinerators located at, on or under the Property; (vi) to the Actual Knowledge of Lessee there is no asbestos contained in, forming part of or contaminating any part of the Property that could reasonably be expected to result in a material liability under



any Environmental Laws; (vii) to the Actual Knowledge of Lessee no polychlorinated biphenyls (PCBs) are used, stored, located at or contaminate any part of the Property that could reasonably be expected to result in a material liability under any Environmental Laws; and (viii) to the Actual Knowledge of Lessee there exists no condition affecting the Property, the improvements, or Lessee that could reasonably be expected to result in a material liability under any Environmental Laws.

(h) Bankruptcy. No bankruptcy, reorganization, arrangement or insolvency proceedings are pending, threatened or contemplated by Lessee or any Affiliate thereof, and neither Lessee nor any Affiliate has made a general assignment for the benefit of creditors.

(i) No Lease Event of Default. No Lease Default or Lease Event of Default exists.

(j) ERISA. No member of the ERISA Group sponsors, maintains, contributes to or is required to contribute to any pension plan subject to Title IV of ERISA and no member of the ERISA Group has at any time in the past sponsored, maintained, contributed to or been required to contribute to any such plan.

(k) Necessary Real Property. Lessee and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interest in, all real property necessary or used in the ordinary conduct of its business except to the extent such failure of title or interest would not have a Material Adverse Effect.

(l) Tax Filings. Each of the Lessee and its Subsidiaries has filed all Federal and other tax returns and reports required to be filed by it having amounts to be reported by it (whether gross, net or otherwise) in excess of \$100,000 and has paid all Federal and other taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets otherwise due and payable in an amount in excess of \$200,000, except those which are being or will be contested in good faith by appropriate proceedings, and no notice of lien has been filed or recorded.

(m) Patents, Trademarks. Each of Lessee and its Subsidiaries owns or is licensed or otherwise has the right to use all patents, trademarks, service marks, trade names, copyrights, franchises, authorizations and other intellectual property rights that are reasonably necessary for the operation of its businesses, without known conflict with rights of any other Person, other than conflicts, either individually or in the aggregate, which could not reasonably be expected have a Material Adverse Effect. Except as specifically disclosed in Schedule 20.01(m), no claim or litigation regarding any of the foregoing is pending, or to the knowledge of Lessee, threatened, which, in either case, could reasonably be expected to have a Material Adverse Effect.

(n) Property-Related Representations and Warranties. With respect to the Property:

(i) The Property and the Improvements and the intended use thereof by Lessee and those claiming by, through or under Lessee, comply in all material respects with all Applicable Laws, including without limitation restrictive covenants, conditions, zoning ordinances, subdivision and building codes, flood disaster laws, applicable Environmental Laws and all other ordinances, orders or legal requirements issued by any

state, federal or municipal authorities having jurisdiction over the Property. The Property is not part of a tax parcel covering any real estate other than the Property. The Property and the Improvements do not require (or have necessary, easements or appurtenant rights) any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements.

(ii) All utility services necessary and sufficient for the use, occupancy, and operation of the Property for its intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas or propane (if applicable), electric and telephone facilities, through public rights-of-way or perpetual private easements.

(iii) All streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, and operation of the Property for its current use and purposes have been completed, have been dedicated to and accepted by the appropriate municipal authority (if applicable) and are open and available to the Property and the Improvements without further condition or cost to Lessor.

(iv) All curb cuts, driveways and traffic signals located on the Property and shown on the survey delivered to Lessor prior to the execution and delivery of this Lease and material to the use and value of the Property for its intended purposes are existing and have been fully approved by the appropriate Governmental Authority.

(v) The Improvements and Fixtures are structurally sound, and the Improvements, the Fixtures and the Equipment are in good repair and free of material defects in materials and workmanship and have been constructed and installed in substantial compliance with the plans and specifications relating thereto. All major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition.

(vi) There are no security agreements or financing statements affecting the Property other than Permitted Liens.

(vii) No part of the Property has been taken in Condemnation, eminent domain or like proceeding nor is any such proceeding pending or, to Lessee's Actual Knowledge and belief, threatened in writing or contemplated.

(viii) There are no other leases, subleases or licenses (other than the Lease and Permitted Encumbrances) in existence in connection with the Property.

(ix) There is a valid permanent Certificate of Occupancy or its equivalent, in each case issued and outstanding for all Improvements.

(x) The Permitted Encumbrances, individually and in the aggregate, do not materially adversely affect the use of the Property or materially interfere with the current use or operation of the Property.

(xi) There are no unpaid charges, debts, liabilities, claims or obligations arising from or in connection with the construction, development, occupancy, ownership, use or operation of the Property which could give rise to a construction, mechanic's or materialmen's lien or other statutory lien against all or a portion of the Property, except as relate to work to be paid, and which will be paid, prior to becoming delinquent, by Lessee in the ordinary course of business.

(xii) There are no material suits, actions, writs, decrees, injunctions, orders, judgments, claims or proceedings pending or, to the Actual Knowledge of Lessee, threatened or contemplated, against, arising out of, or relating to the Property.

(xiii) To the Actual Knowledge of Lessee, all information, books, records and other documents regarding the Property and the Lessee heretofore delivered to Lessor by Lessee or its agents, when taken as a whole, are true and correct in all material respects, fairly present the information contained in such documents as of the date thereof and did not omit to state a material fact required to be stated therein or necessary to make the statements therein not materially misleading.

(xiv) Other than Werner Enterprises ("Oral Licensee"), which is Lessee's primary carrier and which uses the portion of the Property known as shop maintenance, to the Actual Knowledge of Lessee, there are no adverse or other parties in possession of the Property. Lessee shall deliver a subordination letter on the Closing Date pursuant to which the Oral Licensee acknowledges and agrees that its interest in the Property is terminable at will and without advance notice and is subject and subordinate to the interests of all Persons arising under the Operative Documents.

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

(o) Insurance. The properties of Lessee and its Subsidiaries are insured with financial sound and reputable insurance companies, in such amounts and with such deductibles covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where Lessee or such Subsidiaries operate (after giving effect to self-insurance permitted hereunder).

(p) Financial Statements. The most recent audited financial statements of Lessee and its consolidated Subsidiaries (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) are complete and accurate and fairly present the financial condition of Lessee and its consolidated Subsidiaries as of the dates thereof and results of operations for the periods covered thereby; and since January 28, 2000 there have been no changes in the business, operations, property or financial or other condition of Lessee and its Subsidiaries on a consolidated basis that could reasonably be expected to have a Material Adverse Effect.

(q) Location of Office. The principal place of business, chief executive office and office of the Lessee where the documents, accounts and records relating to the transactions contemplated by this Agreement and each other Operative Document are kept are located at 100 Mission Ridge, Goodlettsville, TN 37072, and the state of organization of Lessee is Tennessee.

(r) No Litigation. Except as disclosed in Schedule 20.01(r), there is no litigation against any Lessee or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect.

#### Section 20.02. Defense of Title.

If, while the Debt Documents and the Head Lease are in force, the title to the Mortgaged Property, the Equipment or the interest of the Holders, Agent or Head Lessor shall be the subject of any action at law or in equity, or be attacked, or endangered, clouded or adversely affected in any material manner, Lessee, at Lessee's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel selected by Lessee and approved by the Agent (and/or the Head Lessor as provided in the Intercreditor Agreement), the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest; provided, however, that Lessee shall not be required to defend such title or interest to the extent the claim against such title or interest was caused by any act or acts of the Holders, Agent, Servicer, the Head Lessor or Lessor. Notwithstanding the foregoing, in the event that the Agent (and/or the Head Lessor to the extent related to the Equipment), acting in good faith, determines that Lessee is not adequately performing its obligations under this Section 20.02, the Agent (and/or the Head Lessor to the extent related to the Equipment) may, without limiting or waiving any other rights or remedies, after giving five (5) Business Days' notice to Lessor and Lessee, take such steps with respect thereto as the Agent (and/or the Head Lessor to the extent related to the Equipment) shall deem necessary or proper and any reasonable out-of-pocket costs and expenses incurred by the Agent (and/or the Head Lessor to the extent related to the Equipment) in connection therewith, together with interest thereon at the Default Rate from the date incurred by the Agent (and/or the Head Lessor as provided in the Intercreditor Agreement) until actually paid by Lessee, shall be immediately paid by Lessee on demand and shall be an obligation under this Lease.

Notwithstanding anything herein to the contrary, no Person shall be entitled to take action that shall be binding on the Lessor, in the case of its interest in the Real Property without the consent of the Holders, and in the case of the Equipment without the consent of the Head Lessor. Each of the Persons referred to above agree to cooperate with the Lessee at its cost, expense and risk in the prosecution or defense of a Claim under applicable title insurance.

#### Section 20.03 Certain Covenants of Lessee.

Lessee hereby covenants and agrees with each Participant, that, from and after the date of this Lease until the Lessee Obligations are paid in full:

(a) Financial and Other Information. Lessee shall deliver to each Participant the following financial and other information:

(i) Quarterly Statements -- within 45 days after the end of each quarterly fiscal period in each fiscal year of Lessee (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of

(A) a consolidated balance sheet of Lessee as at the end of such quarter, and

(B) consolidated statements of income, changes in shareholders' equity (to the extent prepared) and cash flows of Lessee, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by an Authorized Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, provided that delivery within the time period specified above of copies of Lessee's Quarterly Report on Form 10-Q, if any, prepared in compliance with the requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 20.03;

(ii) Annual Statements -- within 90 days after the end of each fiscal year of Lessee, duplicate copies of.

(A) a consolidated balance sheet of Lessee and its subsidiaries, if any, as at the end of such year, and

(B) consolidated statements of income, changes in shareholders' equity and cash flows of Lessee and its subsidiaries, if any, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, provided that the delivery within the time period specified above of Lessee's Annual Report on Form 10-K for such fiscal year (together with Lessee's annual report to shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements therefore and filed with the Securities and Exchange Commission, if any, shall be deemed to satisfy the requirements of this Section 20.03(b).

(b) Consolidation. Merger. Sale. etc. Lessee shall not consolidate with any Person, merge into any Person, or convey, transfer, lease or otherwise dispose of to any Person all or substantially all of its assets in any single transaction (or series of related transactions), unless:

(i) in each case, such Person (the "Surviving Corporation") shall be a corporation or organization organized under the laws of the United States of America, a state or commonwealth thereof or the District of Columbia and shall have assumed in writing each obligation, and succeeded to each right, of Lessee under the Operative Documents to which Lessee is a party;

(ii) no Lease Default or Lease Event of Default shall exist prior to or after giving effect to such transaction;

(iii) the Surviving Corporation shall have delivered to each of the Participants (including the Agent) an Officers' Certificate stating that such transaction complies with the terms and conditions of this Section 20.03(b) and that all Governmental Action, if any, required prior to the consummation of such transaction in connection with such transaction have been obtained unless the failure to obtain such Governmental Action would not have a Material Adverse Effect on the ability of the Surviving Corporation to perform its obligations under the Operative Documents; and the Surviving Corporation shall represent and warrant to each of the Participants and shall have caused to be delivered to each of the Participants an opinion of counsel, in form and substance, reasonably satisfactory to each of the Participants, that (x) the Surviving Corporation is a corporation in good standing in the state of its incorporation; (y) all documents executed and delivered by Surviving Corporation pursuant to this Section 20.03(b) have been duly authorized, executed and delivered by the Surviving Corporation and constitute the valid, legal and binding obligations of Surviving Corporation; and (z) all of the Operative Documents to which Lessee is a party will, upon the consummation of such transaction, be the valid, legal and binding obligations of Surviving Corporation, subject in each case to customary exceptions for creditors' rights as well as such other customary exceptions as were contained in the legal opinions delivered concurrently with the execution and delivery of the Lease and the other Operative Documents being executed and delivered as of the date hereof;

(iv) Upon the consummation of such transaction, the Surviving Corporation, if other than Lessee, shall succeed to, and be substituted for, and may exercise every right and power of, Lessee immediately prior to such transaction under each Operative Document to which Lessee was a party immediately prior to such transaction, with the same effect as if the Surviving Corporation had been named herein and therein.

(v) After giving full effect to the transaction, the Surviving Corporation shall have a Lessee's Adjusted Net Worth at least equal to the Lessee's Adjusted Net Worth prior to the consummation of such transaction and a senior long-term unsecured debt rating by the Rating Agencies at least equal to the following:

(A) if Lessee's senior long-term unsecured debt rating prior to such transaction is higher than or equal to A- by Standard & Poor's, or the equivalent by Moody's, then the Surviving Corporation's post-merger senior long-term unsecured debt rating must be equal to or higher than BBB+ by Standard & Poor's or the equivalent by Moody's;

(B) if Lessee's senior long-term unsecured debt rating prior to the merger is equal to or less than BBB+ by Standard & Poor's or the equivalent by Moody's, then the Surviving Corporation's post-merger senior long-term unsecured debt rating must be no less than the next lower level than the premerger rating, but in no event lower than BBB- by Standard & Poor's or the equivalent by Moody's, provided, however, if the Lessee's senior long-term unsecured debt rating prior to the merger is below Investment Grade, then the Surviving Corporation's post-merger long-term unsecured debt rating shall be no lower than the Lessee's senior long-term unsecured debt rating prior to the merger; and

(C) if Lessee is unrated prior to the merger, then the Surviving Corporation shall have an Adjusted Net Worth equal to the pre-merger Adjusted Net Worth of Lessee.

## **ARTICLE XXI**

**[INTENTIONALLY OMITTED]**

## **ARTICLE XXII**

### **LESSOR REPRESENTATIONS, WARRANTIES AND COVENANTS**

#### Section 22.01. Representations and Warranties

The Lessor represents and warrants to Lessee and each Participant that the following are true and correct as of the date hereof:

(a) **Due Organization;** Lessor is a Delaware limited liability company and is duly organized and validly existing and in good standing under the laws of the State of Delaware and the jurisdiction in which the Property is located and has the power and authority to enter into and perform its obligations under each of the Operative Documents to which it is a party.

(b) **Due Authorization: No Conflict.** Each of the Operative Documents to which Lessor is a party has been duly authorized by all necessary action on the part of Lessor and has been duly executed and delivered by Lessor and the execution, delivery and performance thereof by Lessor will not (i) require any approval of the membership of Lessor, other than approvals as have been obtained, (ii) contravene any Applicable Law binding on Lessor or (iii) contravene or result in a breach of or constitute a default under Lessor's organizational documents or operating

agreement, or any indenture, judgment, order, mortgage, Note Purchase Agreement, contract, lease or other agreement or instrument to which Lessor is a party or by which Lessor is bound, or result in the creation of any Lien (other than pursuant to the Operative Documents) upon any of the property of Lessor.

(c) Governmental Actions. All Governmental Actions and other consents, approvals, waivers, registrations, authorizations and other action required or necessary or prudent pursuant to any legal requirement or contract, indenture, instrument or agreement to which Lessor is a party or its property is bound in connection with the execution, delivery and performance by Lessor of the Operative Documents to which it is a party, has been obtained, given or made.

(d) Enforceability. Each of the Operative Documents to which Lessor is or is to become a party constitutes the legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, moratorium, fraudulent conveyance, insolvency, equitable principles or similar laws affecting the enforcement of creditors' rights in general.

(e) Investment Company. Lessor is not an "investment company" or a company "controlled by" an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(f) No Litigation. There is no action or proceeding pending or, to Lessor's knowledge, threatened, to which it is or will be a party.

(g) Use of Proceeds. Except as expressly contemplated by the Operative Documents, the proceeds of the Loans from the Holders shall not be used by Lessor for any purpose other than to finance the acquisition of the Lessor's purchase of the Property (excluding the Equipment), and fees, expenses and other disbursements related thereto and the transactions contemplated by the Operative Documents.

(h) Securities Matters. Neither Lessor, nor any Person authorized by Lessor to act on its behalf has offered or sold any membership in Lessor, the Notes or in any other security, the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the aforementioned securities to, or solicited any offer to acquire any of the same from, any Person, other than in the case of the membership interests of Lessor, First Union Development Corporation, and in the case of the Notes, the Agent and the Holders; and neither Lessor nor any Person authorized by Lessor to act on its behalf will take action that would subject, as a direct result of such action alone, the issuance or sale of any of the aforementioned securities to the provisions of Section 5 of the Securities Act.

(i) Principal Place of Business. Lessor's principal place of business, chief executive office and the office where the documents, accounts and records relating to the transactions contemplated by this Lease and each other Operative Document are kept are located at One First Union Center, TW-6, Charlotte, NC 28288-0166, Attn: Abizar Rangwala. Vice President, facsimile number (704) 383-8108, with a copy to: Timothy Danello, Senior Vice President and



(j) Lessor Liens. The Property is free and clear of all Lessor Liens other than any Lessor Liens contemplated by the Operative Documents.

(k) Single Purpose Entity. Lessor is a Single Purpose Entity.

Section 22.02. Lessor Covenants.

(a) No Amendment. Without the consent of Lessee, Agent and Head Lessor, Lessor shall not cause or permit an amendment to the articles of organization or operating agreement of Lessor, except for amendments of a purely ministerial or administrative nature.

(b) Transfer. Except as provided below, without the consent of the Lessee, Agent and Head Lessor, Lessor shall restrict each member of Lessor from transferring all or any portion of its right, title and interest in and to the Lessor unless:

(i) such transferee is a United States person within the meaning of Section 7701(a)(30) of the Code or otherwise is exempt from U.S. federal income tax withholding requirements as of the date of transfer;

(ii) no transferee shall be or shall have been in a lawsuit or other adversarial proceeding against Lessor, Agent, any Holder or any Affiliate of the foregoing within the immediately preceding ten (10) year period prior to the transfer;

(iii) such transferee shall execute a joinder, assumption agreement or the operating agreement of Lessor pursuant to which it agrees to undertake all covenants and obligations of the transferor arising after the date of such transfer, including without limitation those obligations arising under the Indemnity Agreement, and agrees to be bound by the restrictions on transfers set forth in this Section 22.02;

(iv) such transfer will not contravene or violate any Applicable Law, including the Securities Act;

(v) the transferor shall have given at least ten (10) days' prior notice to Lessee, Agent and Head Lessor of such transfer; and

(vi) at the date of any transfer, the transferor shall certify to each of Lessee, Agent and Head Lessor that the conditions to the proposed transfer prescribed by this Section 22.02 to be met by the transferor or the transferee respectively, have been satisfied.

(c) Tax Matters. Lessor covenants that its status shall not result in a Loss or Income Inclusion to Head Lessor, and Lessor shall not take any action that would result in the inaccuracy

of any representations and warranties contained in Section 19.03(b) if such representations and warranties were deemed to have been made by it.

### **ARTICLE XXIII SUBSTITUTION OF PROPERTIES**

#### Section 23.01. Criteria for a Substitute Property.

Subject to the following conditions, Lessee shall have the right as described in Section 12.01(c) to offer to Lessor to substitute under this Lease the Property after a Casualty. In any such instance in which Lessor has accepted such offer, Lessee may withdraw from this Lease the Property (for purposes of this Article, a "Withdrawn Property"), and substitute therefore a Substitute Property, such right on the part of Lessee shall be subject to Section 21.02 and the following:

(a) the Fair Market Sales Value and Fair Market Rental Value of the Substitute Property (taking into account individually in such determination the separate property that will comprise the Equipment, which must have a Fair Market Sales Value, Fair Market Rental Value, utility and remaining useful life as the portion of the Equipment constituting a portion of the Withdrawn Property) (assuming compliance with the Lease) must be at least equal to the Fair Market Sales Value and Fair Market Rental Value of the Withdrawn Property as of the date immediately preceding the date of Casualty or Condemnation (assuming compliance with the Lease and assuming that it is unencumbered by this Lease), which Fair Market Sales Values and Fair Market Rental Values shall be as determined by the Appraisal Procedure;

(b) the Fair Market Sales Value (Dark) of the Substitute Property must be at least equal to the Fair Market Sales Value (Dark) of the Withdrawn Property as of the scheduled maturity date of the Notes, which Fair Market Sales Value (Dark) shall be as determined by the Appraisal Procedure;

(c) the remaining useful life of the Substitute Property shall be at least equivalent to the remaining "useful life" of the Withdrawn Property (which shall be separately determined with respect to any Head Lessor Property), as determined by the Appraisal Procedure (and calculated prior to the Event of Loss and assuming compliance with this Lease);

(d) to the extent not considered by the Appraisal Procedure, the Substitute Property and each component thereof shall be free of any liabilities, title defects, and other conditions that would adversely affect such Substitute Property's fair market value;

(e) notwithstanding anything to the contrary contained herein, in no event shall Lessee have the right to offer to substitute a Substitute Property for the Property if a Lease Event of Default exists or a Lease Default shall have occurred and be continuing or giving effect to the substitution will occur or if such substitution would adversely affect any rights of any parties having an interest in the residual value insurance policy issued by FSL Group in connection with the closing of the Overall Transaction;

(f) the transaction shall constitute a tax-free exchange under Section 1031 of the Code which will result in no adverse tax consequence to any Indemnitee (in each case as determined by such Indemnitee) and further shall not result in any adverse accounting treatment to any Indemnitee (in each case as determined by such Indemnitee);

(g) the exercise of ownership rights with respect to the Substitute Property by Lessor (and with respect to the Equipment constituting a portion of such Substitute Property ownership rights of Head Lessor) and the ability of Agent, Lessor and Head Lessor to exercise rights and remedies under the Operative Documents in the jurisdiction in which the Substitute Property is located shall in all respects be similar, or no less favorable, than such ability to exercise rights and remedies in the jurisdiction in which the Withdrawn Property is located;

(h) such Substitute Property is located in the continental United States and is acceptable to the Lessor, and on the date on which the substitution is effected the Substitute Property is in a condition that complies with all applicable requirements of this Lease and the Debt Documents with respect to the Substituted Property;

(i) the transactions contemplated in connection with the substitution of the Withdrawn Property for the Substitute Property shall not expose any Indemnitee to a risk of any Claim materially different or in excess of the risk of exposure to any such Claim with respect to the Withdrawn Property, and in no event shall expose any Indemnitee to any unindemnified Claim; and

(j) prior to the proposed substitution Lessee shall execute and deliver to FSL Group and Agent (i) a copy of the "Phase I" environmental assessment report described in ss. 23.02(b) hereto, (ii) a copy of a final as-built survey described in ss. 23.02(e) hereto, and (iii) a copy of a title commitment issued by the relevant title insurance company, each of which shall be acceptable to FSL Group and Agent and each naming FSL Group and Agent as a party entitled to rely thereon.

#### Section 23.02. Lessee and Lessor Deliveries.

In connection with any substitution of the Property, Lessee shall execute (where appropriate) and deliver to Lessor for Lessor's review and approval in Lessor's reasonable direction:

(a) title insurance policies insuring Lessor's and the Agent's interest in the Substitute Property and the Mortgage Lien on such Substitute Property with no exceptions other than Permitted Liens (provided that all Permitted Encumbrances shall be acceptable to Agent and Head Lessor), title insurance exceptions comparable to those permitted with respect to the Properties as of the Closing Date and other exceptions satisfactory to Agent, Lessor and Head Lessor;

(b) a "Phase I" Environmental Site Assessment report in form substantially similar to the form of such report delivered to Lessor on or before the Closing Date in respect of the Properties and in substance satisfactory to Lessor;

- (c) a report by an engineering firm or consultant describing the condition of the Substitute Property, satisfactory in form and substance to Lessor;
- (d) an amendment to this Lease and any memorandum hereof duly executed and acknowledged in form and substance satisfactory to Lessor and Lessee to replace the description of the Withdrawn Property with the description of the Substitute Property and to correct Exhibit B and such other amendments as may be required to the other Operative Documents or otherwise reasonably requested by any Participant;
- (e) a copy of a final as-built survey of the Substitute Property, dated as of recent date, satisfactory in form and substance to Lessor and meeting the survey requirements employed in connection with Lessor's acquisition of the Withdrawn Property;
- (f) certificates of insurance, if any, required with respect to the Substitute Property pursuant to the terms of this Lease;
- (g) one or more appraisals by a Qualified Appraiser of the Substitute Property acceptable to Lessor and Agent and containing such opinions and covering such matters similar to those delivered in appraisals delivered on the Closing Date as Lessor and Agent may request;
- (h) a deed conveying fee title to the Substitute Property executed and delivered in favor of Lessor and in substance (with respect to warranties, if any) substantially similar to the deeds delivered to Lessor on the Closing Date with respect to the Withdrawn Property;
- (i) a bill of sale with respect to the portion of the Substitute Property constituting Equipment executed and delivered in favor of Head Lessor and in substance (with respect to warranties, if any) substantially similar to the Bill of Sale delivered to Head Lessor on the Closing Date with respect to the portion of the Withdrawn Property constituting Equipment;
- (j) a legal opinion relating to the due authorization, execution and delivery of the amendment to the Lease, deed, bills of sale and other documents required to be delivered in connection herewith, respectively, in each case substantially similar to the opinions of counsel delivered to Lessor, Agent, Head Lessor and other parties on the Closing Date;
- (k) a deed with covenants against grantor's acts and other affidavits, documents and certificates appropriate to convey the Withdrawn Property on an "as-is" basis in favor of Lessee or its designee;
- (l) a satisfaction of mortgage, a release of lien, UCC termination statements and other documents appropriate to release the Withdrawn Property from the liens created by the Debt Documents, in each case in form and substance satisfactory to the Agent in its reasonable discretion;
- (m) a bill of sale and UCC termination statements sufficient to transfer to Lessee or its designee the Equipment free and clear of Lessor Liens arising through the Head Lessor in form and substance satisfactory to the relevant Participants, such conveyance to be on an "as-is" basis;

(n) a certificate of Lessee stating that all representations and warranties in Section 20.01 of this Lease are true and correct in all material respects as of the date of substitution with respect to the Substitute Property;

(o) the filing of Debt Documents in form and substance similar to the original Debt Documents, except to the extent required to meet local custom and Applicable Laws in the jurisdiction in which such Substitute Property is located;

(p) the filing of UCC financing statements against such parties and in such jurisdictions as may be required by Agent and relevant Participants; and

(q) satisfaction of any other conditions precedent required to be satisfied in connection with the original acquisition of the Withdrawn Property and satisfaction of such other conditions precedent, including the delivery of such other documents, agreements, certificates, reports and opinions and the providers thereof, as may be reasonably required by the relevant Participants.

All of the foregoing (including the providers thereof) shall also be submitted to and be subject to the reasonable approval of the Lessor and other relevant Participants. All reports and other information required under Section 23.02 shall name the Lessor and its assigns as parties entitled to rely thereon.

The Lessor and other relevant Participants shall have forty-five (45) days in which to consent to the foregoing deliveries. The failure of Lessor to respond within such 45-day period shall be deemed rejection. The closing for the transfer of the Withdrawn Property and the acquisition of the Substitute Property shall occur at a time which is mutually acceptable to Lessee and the relevant Participants. Upon Lessee's satisfaction of Sections 23.01 and 23.02, Lessor shall, within two (2) Business Days after its approval of any instrument delivered in accordance with the above provisions of this Article XXIII for execution and delivery, by Lessor, execute and deliver such instrument to Lessee. If Lessor shall object (or be deemed to object) to any proposed Substitute Property then Lessee may submit an alternative proposed Substitute Property, and, in that event, the period within which Lessee must effect a substitution hereunder shall be extended for an additional forty-five (45) days; Lessee may in good faith submit successive alternative proposed Substitute Properties and shall be entitled to extensions of the period within which substitutions must be effected in accordance with the above provisions of this Section.

In connection with any Withdrawn Property and Substitute Property (or proposed Substitute Property) Lessee shall pay on demand to (i) such Participant an amount equal to the reasonable expenses of such Participant, including reasonable attorneys' fees and expenses incurred in connection with such Withdrawn Property or Substitute Property, and a reasonable underwriting fee to the Holders and (ii) FSL Group an amount equal to the reasonable expenses of FSL Group, including reasonable attorneys' fees, internal and external underwriting costs, and any other costs related to the preparation and issuance of an endorsement to any insurance policy provided to Lessee by FSL Group. Notwithstanding anything herein to the contrary, Lessee shall Indemnify each Indemnitee in connection with the transactions contemplated by this Article XXIII, whether or not any such transactions are consummated.

## ARTICLE XXIV

### PURCHASE PROCEDURE

#### Section 24.01. Purchase Procedure.

In the event of the purchase of Lessor's interest in the Property by Lessee pursuant to any provision of this Lease, the terms and conditions of this

Section 24.01 shall apply.

(a) On the Closing Date fixed for the purchase of Lessee's interest in the Property:

(i) Lessee shall pay to Lessor, in lawful money of the United States, at Lessor's address, hereinabove stated or at any other place in the United States which Lessor may designate (or, if assigned, to Lessor's assignee and to such account and in such manner as provided by such assignee), the applicable purchase price;

(ii) Lessor shall execute and deliver to Lessee a deed with covenants against grantor's acts, assignment and/or such other instrument or instruments as may be appropriate, which shall transfer Lessor's interest in the Property, subject to, (A) Permitted Liens, (B) Lessor Liens attributable to Lessor attaching to the Property after the Closing Date which shall not have been created or caused by Lessor (unless consented to by Lessee), (C) all Applicable Laws, and, (D) if such purchase is pursuant to Article XII or in other circumstances where the obligations under the Loan Documents are required to be fully paid, free of the liens created by the Debt Documents; and

(iii) If the Equipment is being acquired as a part of such transaction, Head Lessor shall execute and deliver to Lessee a bill of sale transferring the Equipment to Lessee free and clear of Lessor Lien's attributable to Head Lessor attaching to the Equipment after the Closing Date (which shall not have been created or caused by Lessor unless consented to by Lessee), and such transfer shall be "as-is," "where-is" and in then-present physical condition.

(iv) Upon receipt by Lessor, Agent, each Holder and Head Lessor of all amounts due such Persons under any Operative Documents, each such Person shall execute and deliver such other instruments of conveyance, releases, UCC termination statements, affidavits and other documents and agreements as may be reasonably required to consummate the conveyance of the Property, all in form and substance as is reasonably acceptable to the Person required to execute and deliver the same.

(b) Lessee shall pay all reasonable costs, charges and expenses incident to such transfer, including, without limitation, all survey costs, title report costs, recording fees, transfer taxes, title insurance premiums and federal, state and local taxes if applicable but excluding net income taxes (except to the extent relevant in measuring damages in the case of a Lease Event of Default).

**ARTICLE XXV  
TRANSFER OF LESSOR'S INTEREST**

Section 25.01. Permitted Transfer.

Subject to Article IV, Lessor may transfer all, but not less than all, of its right, title and interest in and to the Property (including its leasehold interest in the Equipment) and its rights under this Lease and the other documents relating thereto with respect to such Property, on the following terms and conditions, each of which shall be satisfied prior to the effective date of the transfer (other than a transfer by a deed-in-lieu of foreclosure or similar transfer made in connection with an exercise of remedies under the Debt Documents):

(a) with respect to a transfer of the Property, the Lease or any interest therein, the transferee must be a Person that shall be able to represent that it is a Single Purpose Entity, which shall be true (and the transferee shall make such representations and warranties to Lessee immediately prior to the effectiveness of the closing of such transfer);

(b) such transfer shall be in compliance with the terms of the Note Purchase Agreement and with Applicable Laws, shall comply with and not violate any provisions of the Head Lease and shall not create a relationship which would violate Applicable Laws;

(c) such transferee shall execute a joinder or assumption agreement pursuant to which it agrees to undertake all the covenants and obligations of Lessor under the Operative Documents arising after the date of transfer, such joinder or assumption agreement to be in form and substance reasonably satisfactory to Lessee and other relevant Participants, and such transferee and the equity owners thereof shall execute an indemnity agreement in form and substance similar to the Indemnity Agreement;

(d) such transferee is a "United States person" within the meaning of Section 7701(a)(30) of the Code or otherwise is exempt from U.S. federal income withholding requirements as of the date of the transfer. Neither the transferee nor any member or equity owner thereof or any Affiliate shall be or shall have been in a lawsuit or other adversarial proceeding against Lessee or any Affiliate within the immediately preceding ten (10) years prior to the date of the transfer;

(e) such transfer will not contravene or violate any Applicable Law, including the Securities Act;

(f) the transferor shall have given at least sixty (60) days' prior notice to Lessee, Agent and Head Lessor of such transfer, which notice shall contain such information and evidence as shall be reasonably necessary to establish compliance with this Article XXV and the name and address of the transferee for notices;

(g) the transferor and the transferee shall each have delivered to Lessee, Agent, FSL Group (if required) and Head Lessor an Officer's Certificate to the effect that the conditions to

the proposed transfer prescribed by this Article XXV to be met by the transferor or the transferee, respectively, have been satisfied;

(h) the transferor and the transferee shall pay all expenses in connection with such transfer, including reasonable attorneys' fees and expenses;

(i) to the extent required under the documents evidencing the residual guaranty provided by FSL Group on behalf of the Holders, the consent of FSL Group shall have been provided; and

(j) the Lessee shall have ratified and reaffirmed its obligations hereunder in a form substantially similar to that in Exhibit D attached hereto.

Notwithstanding anything herein to the contrary, the obligations set forth above shall not apply to any sale or other transfer of the Property or any portion thereof otherwise permitted pursuant to the terms of this Lease and shall not apply in connection with the exercise of remedies after the occurrence of an Event of Default.

#### Section 25.02. Effects of Transfers.

From and after any transfer effected in accordance with this Article XXV, the transferor shall be released, to the extent of the interest transferred and the obligations assumed by the transferee, from its liability arising after the date of such transfer hereunder and under the other documents to which it is a party relating to the interests being transferred. Such release shall be in respect of obligations (that are assumed by the transferee) arising on or after the date of such transfer. Upon any transfer by Lessor as above provided, any such transferee shall be deemed the "Lessor" for all purposes of such documents and each reference herein to Lessor shall thereafter be deemed a reference to such transferee for all purposes, except as provided in the preceding sentence. Lessee agrees to execute any and all documents reasonably appropriate to effectuate the contemplated transfer by Lessor, including, without limitation, an amendment to this Lease providing that the new Lessor shall be Lessor and the existing Lessor shall be released from its liabilities arising after the date of such transfer.

## **ARTICLE XXVI**

### **PERMITTED FINANCING**

#### Section 26.01. Financing During Term.

Lessee hereby expressly consents to the Lien imposed in favor of the Indebtedness pursuant to the Debt Documents and such Indebtedness as in effect on the date hereof. In connection with any refinancing of the initial Indebtedness during the Base Term and during any Renewal Term, Lessor shall be free to encumber the Property to the extent not violative of any other Operative Document; provided, that under no circumstances shall there be any second mortgage or subordinated financing nor shall any such refinancing adversely affect the rights and privileges of Lessee under this Lease in any respect, or increase the nature, scope or amount of



any obligations of Lessee in excess of those existing prior to any such refinancing or increase the nature, scope or amount of any payment obligations of Lessee in excess of those existing prior to any such refinancing; provided, further Lessee acknowledges that an increase in the principal amount over the principal outstanding on the Indebtedness, an increase in the interest rate over the interest rate applicable to the Notes, the imposition of additional covenants on the Lessor over covenants in the Debt Documents, additional or different provisions relating to events of default, remedies, late charges, default rate interests, intercreditor matters and other covenants and provisions that do not alter the terms and conditions of this Lease shall not be deemed to violate the foregoing proviso. In connection with any refinancing, Lessee shall not be obligated for any make-whole premium or similar amount in excess of its obligations related to Make-Whole Premium as if no refinancing occurred. Further, any such refinancing shall not adversely affect the rights and privileges of Head Lessor under the Head Lease or any Operative Document without the consent of the Head Lessor. Any refinancing shall be subject to the implementation of an intercreditor arrangement in form and substance acceptable to the relevant Participants and evidenced by documentation acceptable to each relevant Participant and the new lenders. Lessee and its Affiliates will have no obligation to amend this Lease or any other Operative Documents to facilitate such refinancing (except to amend the definitions of "Debt Documents," "Holders," "Indebtedness," "Mortgage," "Note," "Agent," etc. to mean the replacement documents, the new lender, the new indebtedness and the references to the sections therein and to make any other amendments required by the relevant parties that do not violate the provisions of this Section 26.01); but shall execute and deliver a subordination and attornment agreement to any lender to Lessor permitted by the above terms of this Section 26.01 if such lender(s) shall in turn deliver a. nondisturbance agreement to Lessee, in each case with terms substantially similar to the SNIDA. Lessee agrees to reasonably cooperate with any refinancing by Lessor permitted hereunder. Such cooperation shall include, without limitation, (i) naming such new lender (s) as Additional Insured(s); and (ii) subject to such lenders entering into an intercreditor agreement in form and substance acceptable to the relevant Participants, making payments of Base Rent and/or Supplemental Rent to or at the direction of such lender(s).

Notwithstanding anything herein to the contrary, Lessee acknowledges that the maturity of the financing under the Debt Documents is twenty-two (22) years from the commencement of the Base Term. In the event that the Lessee has elected any Renewal Term, it shall be necessary for the Lessor to arrange a refinancing in order to preserve its equity or residual interest in the Property. To facilitate such required refinancing, Lessee, at the cost and expense of Lessor, shall cooperate with Lessor in order to consummate a refinancing of the Indebtedness. In that regard, the Lessee shall not take any discretionary action that would interfere or adversely affect in any material respect the ability of the Lessor to refinance such Indebtedness, provided that a nondisturbance agreement in form and substance substantially similar to the SNDA will be executed and delivered by the replacement agent and holders.

#### Section 26.02. Counterparts, Memorandum.

This Lease may be simultaneously executed in multiple counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes. Lessee and Lessor agree that a memorandum of this Lease (and any amendment hereof) shall be executed and recorded, at Lessee's expense, in the land records of the jurisdiction in which the Property is situate.

## ARTICLE XXVII

### MISCELLANEOUS

#### Section 27.01. Binding Effect: Successors and Assigns Survival.

The terms and provisions of this Lease, and the respective rights and obligations hereunder of Lessor and Lessee, shall be binding upon their respective successors, legal representatives and assigns (including, in the case of Lessor, any Person to whom Lessor may transfer the Property) and inure to the benefit of their respective permitted successors and assigns, and the rights hereunder of the Agent shall inure (subject to such conditions as are contained herein) to the benefit of its permitted successors and assigns. Each Participant and other Person referred to herein as an Indemnitee are intended to be, and shall be third party beneficiaries under this Lease. Without limiting the foregoing, each such Person shall be entitled to enforce provisions under Article XIX to the extent any Claim is made against it.

#### Section 27.02. Quiet Enjoyment.

Lessor covenants that, so long as Lessee shall faithfully perform the agreements, terms and conditions of this Lease, Lessee shall and may peaceably and quietly have, hold and enjoy the Property for the Lease Term hereby granted without molestation or disturbance by or from Lessor, free of any encumbrance or lien granted by Lessor except for Permitted Liens and Permitted Encumbrances.

#### Section 27.03. Notices.

Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be in writing sent to either (i) that Person's Address, and a copy thereof shall be sent to each Person to receive a copy pursuant to the definition of "Address," by a nationally recognized overnight courier service, and any such notice shall be deemed received one (1) Business Day after delivery to a nationally recognized courier service specifying overnight delivery, or (ii) that Person's fax number, and a second copy thereof shall be sent to each Person required to receive a copy pursuant to the definition of "Address," by a nationally recognized overnight courier service, specifying overnight delivery, prepaid, and any such notice shall be deemed received after the earlier of (x) the confirmation of receipt of such fax, or (y) one (1) Business Day after delivered to such courier. From time to time any party may designate a new Address or fax number for purposes of notice hereunder by giving fifteen (15) days' written notice thereof to each of the other parties hereto. All notices given hereunder shall be irrevocable unless expressly specified otherwise.

#### Section 27.04. Severability.

Any provision of this Lease that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in

any other jurisdiction, and each party hereto shall remain liable to perform its obligations hereunder except to the extent of such unenforceability. To the extent permitted by Applicable Law, Lessee hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

Section 27.05. Amendments, Complete Agreements.

Neither this Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but may be terminated, amended, supplemented, waived or modified only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought and by the Agent and Head Lessor (provided that the consent of the Agent shall not be required to the extent relating solely to the Head Lease) (or its successors and/or assigns). This Lease is intended by the parties as a final expression of their lease agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. No representations, undertakings or agreements have been made or relied upon in the making of this Lease other than those specifically set forth in the Operative Documents and the deliveries made in connection therewith.

Section 27.06. Headings.

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

Section 27.07. Governing Law.

This Lease shall be governed by, and construed in accordance with, the laws of the State in which the Property is situated.

EACH PARTY HERETO SUBMITS TO NON-EXCLUSIVE PERSONAL JURISDICTION IN THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF NEW YORK (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF SUCH PERSON'S OBLIGATIONS HEREUNDER AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE OBLIGATIONS OWING TO ANY PERSON HEREUNDER. EACH PARTY HERETO HEREBY WAIVES AND AGREES NOT TO ASSERT AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE (A) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE IN THOSE COURTS OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (B) THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR (C) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER. EACH PARTY

**HERETO HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATED TO THE ENFORCEMENT OF THIS LEASE.**

**THE PARAGRAPH SET FORTH ABOVE SHALL APPLY TO ANY SIGNATORY HERETO AND THE SUCCESSORS AND ASSIGNS OF ANY PARTY OR SIGNATORY HERETO.**

Section 27.08. Estoppel Certificates.

Each party hereto agrees that at any time and from time to time during the Lease Term (but on no more than two occasions during each Lease Year), it will promptly, but in no event later than ten (10) days after receipt of request by the other party hereto, execute, acknowledge and deliver to such other party a certificate in the form of Exhibit C attached hereto (in each case, to the extent the items set forth therein are true as of the date of such certification). In addition, each party agrees to include in such certificate such other items as may be reasonably requested under the circumstances giving rise to the delivery of such certificate (in each case, to the extent the items set forth therein are true as of the date of such certification). Such certificate may be relied upon by any bona fide, permitted purchaser of, or mortgagee with respect to, Lessor's or Lessee's interest in the Property (direct or indirect), or any prospective sublessee of Lessee in respect of the Property.

Section 27.09. Easements.

So long as no Lease Default or Lease Event of Default has occurred and is then continuing, and provided that no such action could reasonably be expected to have an adverse effect upon Lessee's ability to perform its obligations under the Operative Documents, or on the Fair Market Rental Value or Fair Market Sales Value of the Property (or any portion thereof, including the Equipment), Lessor will join with Lessee from time to time at the request of Lessee (and at Lessee's sole cost and expense) to:

(a) subject to the terms of Article XII, sell, assign, convey or otherwise transfer an interest in any or all of the Property to any Person legally empowered to take such interest under the power of eminent domain (and the to extent required with respect to the Equipment, the Head Lessee will cause Head Lessor to execute a bill of sale with respect to the Equipment, to the extent subject to such eminent domain proceeding, such bill of sale to be "as-is," "where-is" and without representation or warranty other than a warranty as to no Lessor Liens arising under Head Lessor), and dedicate or transfer unimproved portions of any or all or the Property for road, highway or other public purposes so long as not adversely effecting access to or the value of the Property;

(b) upon approval by Lessor, which approval shall not unreasonably be withheld, (i) grant new (or release existing) easements, servitudes, licenses, rights of way and other rights and privileges in the nature of easements, with respect to the Property, and (ii) execute amendments to any covenants and restrictions affecting the Property; and

(c) execute and deliver any instrument, in form and substance reasonably acceptable to Lessor (and to the extent affecting or having the potential to affect the Equipment, in form and substance reasonably acceptable to Head Lessor), necessary or appropriate to make or confirm the grants, releases or other actions described above in Section 27.09(a) and Section 27.09(b).

#### Section 27.10. No Joint Venture

Any intention to create a joint venture or partnership relation between Lessor and Lessee is hereby expressly disclaimed.

#### Section 27.11 No Accord and Satisfaction.

The acceptance by Lessor or any other Person of any sums from Lessee (whether as Rent or otherwise) in amounts which are less than the amounts due and payable by Lessee hereunder is not intended, nor shall be construed, to constitute an accord and satisfaction, or compromise, of any dispute between such parties regarding sums due and payable by Lessee hereunder, unless Lessor or any other Person specifically deems it as such in writing.

#### Section 27.12. No Merger.

In no event shall the leasehold interests, estates or rights of Lessee hereunder or of the Agent or Head Lessor merge with any interests, estates or rights of Lessor in or to any and all of the Property, it being understood that such leasehold interests, estates and rights of Lessee~ hereunder, and of the Agent or Head Lessor shall be deemed to be separate and distinct from Lessor's interests, estates and rights in or to the Property, notwithstanding that any such interests, estates or rights shall at any time or times be held by or vested in the same Person.

#### Section 27.13. Lessor Bankruptcy.

During the Lease Term the parties hereto agree that if Lessee elects to remain in possession of any and all of the Property after the rejection of the Lease by Lessor under Section 365(h) of the Bankruptcy Code all of the terms and provisions of this Lease shall be effective during such period of possession by Lessee.

#### Section 27.14. Naming and Signage of the Property.

So long as no Lease Event of Default shall have occurred and be continuing, Lessee shall have the sole and exclusive right, at any time and from time to time, to select the name or names of the Property and the Improvements, and the sole and exclusive right to determine not to use any name in connection with the Property, as well as all rights in respect of signage for or in connection with the Property, in any case so long as in compliance with Applicable Laws, Lessor shall not have or acquire any right or interest with respect to any such name or names used at any time by Lessee, or any trade name, trademark service mark or other intellectual property of any type of Lessee.

#### Section 27.15. Investments.

Any moneys held by Lessor (or by the Agent, Servicer or Proceeds Trustee) pursuant to this Lease, including Sections 8.06 and 12.04, except when there exists a Lease Default or Lease Event of Default shall, until paid to Lessee, be invested by Lessor or, if the Debt Documents are in effect, by the Agent or Proceeds Trustee, as the case may be, in Permitted Investments as directed by or on behalf of Lessee. Any gain (including interest received) realized as a result of any such investment (net of any fees, commissions, Taxes and other expenses, if any, incurred in connection with such investment) shall be retained with, and distributed and re-invested in the same manner, as the original principal amount. None of Lessor, Agent, Servicer, Proceeds Trustee or any other Person (other than Lessee) holding, investing and reinvesting monies at any time under this Lease shall have any liability for any losses arising from any such Permitted Investments or reinvestments and any losses incurred in holding, investing and reinvesting monies shall be subject to indemnity from Lessee. At such time as there no longer exists a requirement under this Lease for the Lessor, Agent or other holder of any proceeds to hold such proceeds, and no Lease Default or Lease Event of Default is continuing, such amounts, together with any income thereon, shall be disbursed to Lessee or other Person entitled thereto pursuant to the relevant terms of the Operative Documents.

#### Section 27.16. Further Assurances.

Lessor and Lessee, at the cost and expense of the Lessee, will cause to be duly taken, executed, acknowledged and delivered as promptly as reasonably practicable all such farther acts, documents and assurances as any party to any Operative Document reasonably may request from time to time in order to carry out more effectively the intent and purposes of this Lease and the other Operative Documents.

#### Section 27.17. Conveyance Expenses.

All transfer taxes, title insurance premiums, and other costs, fees and expenses (including reasonable attorneys fees and expenses) incurred in connection with the transfer of any or all of the Property to Lessee under Articles XI, XII, XII] or XXIII or otherwise arising under this Lease shall be paid by Lessee. All such amounts incurred in connection with a transfer to Lessee or its designee under Article IV shall be paid in accordance with the terms of the relevant offer.

#### Section 27.18. Independent Covenants.

The covenants of Lessor and Lessee herein are independent and several covenants and not dependent on the performance of any other covenant in this Lease.

#### Section 27~19. Lessor Exculpation.

Anything to the contrary in this Lease notwithstanding, the covenants contained in this Lease to be performed by Lessor shall not be binding on any member of Lessor. Covenants of Lessor under this Lease are made for the purpose of binding only all of Lessor's right, title and interest in and to the Property and any proceeds thereof, and, except as expressly provided below, none of the Lessor nor any of its Affiliates or any successors and assigns thereof shall

have any liability under this Lease in excess of such Person's interest in the Property and the proceeds thereof. Lessor shall be fully liable to the extent of its assets with respect to (i) Lessor Liens arising by, through or under the Lessor or any equity owner thereof or (ii) any breach of the Lessor of its covenants under Section 22.02, 25.01, 26.01 or 27.02 (to the extent the Lessor acts at the written direction of the equity owner of Lessor).

Section 27.20. Holding Over.

Lessee covenants that if for any reason Lessee or any subtenant of Lessee shall fail to vacate and surrender possession of the Property or any part thereof on or before the applicable return date or the expiration or earlier termination of this Lease (the "Lease Expiration Date"), then Lessee's continued possession of the Property shall be as a tenant at sufferance, during which time, without prejudice and in addition to any other rights and remedies Lessor may have hereunder or at law, Lessee shall pay to Lessor an amount equal to: (a) one hundred twenty-five percent (125%) of the total monthly amount of Rent payable hereunder immediately prior to such termination (the "Existing Rent") for the first thirty (30) days during which Lessee holds over, and (b) one hundred fifty percent of the Existing Rent thereafter. The provisions of this Section shall not in any way be deemed to (i) permit Lessee to remain in possession of the Property after the Lease Expiration Date or sooner termination of this Lease, or (ii) imply any right of Lessee to use or occupy the Property upon expiration or termination of this Lease and no acceptance by Lessor of payments from Lessee after the Lease Expiration Date shall be deemed to be other than on account of the amount to be paid by Lessee in accordance with the provisions of this Section. Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease.

Section 27.21. Survival.

All representations and warranties made herein and all indemnity, reimbursement and other obligations arising hereunder relating to the payment of costs or expenses incurred by any Person shall survive the closing and termination of this Lease and shall be deemed to extend any applicable statute of limitations to the extent that a third party has made a Claim against any Person entitled to indemnity or reimbursement hereunder where such third party is legally entitled to bring any such Claim under any statute of limitations applicable thereto.

Section 27.22. [INTENTIONALLY OMITTED]

Section 27.23. Lease Subordinate.

This Lease, the leasehold estate of Lessee created hereby and all rights of Lessee hereunder are and shall be subject and subordinate to the Mortgage, the Head Lease and all renewals, modifications, consolidations, replacements and extensions of the Mortgage and the Head Lease; provided, that the relevant parties shall have executed and delivered the SNDA.

Section 27.24. Intent of Parties; Security Interest.

The parties hereto intend for this Lease to constitute a true lease for income tax purposes and for purposes of commercial law. In the event that for any reason this Lease shall not be

construed to constitute a true lease and shall constitute a financing for commercial law or other purposes, the Lessee hereby grants to Lessor a first priority security interest in and to the Equipment and agrees to take such action at its expense as may be necessary, prudent or requested by Lessor to perfect and preserve the first priority perfected nature of the security interest intended to be granted hereby.

Section 27.25. Certain Rights of Agent.

Notwithstanding anything to the contrary contained in the Lease or any other Operative Document, so long as any obligation of the Lessor under the Debt Documents remains unsatisfied, the following provisions shall apply:

(a) In the event that any event or circumstance shall arise regarding which Lessee may predicate a claim of a default or breach by Lessor of any of its obligations under the Lease, upon serving notice on Lessor, Lessee shall at the same time serve a duplicate counterpart of such notice to the Agent and the Head Lessor pursuant to the provisions of Section 27.03, and no notice by Lessee to Lessor shall be deemed to have been served unless and until such duplicate counterparts thereof have also been served on the Agent and Head Lessor.

(b) Lessee specifically agrees not to terminate the Lease as a result of any default by Lessor without the prior written consent of Agent and each other relevant Participant.

(c) The Agent shall have the right within the period provided to Lessor to remedy or cause to be remedied any default or matter on which Lessee may predicate a claim of a default, but in no event less than thirty (30) days from the date notice is served on such Participant (and if such default cannot reasonably be cured within such thirty (30) day period, such longer period as may reasonably be required to cure such default so long as any Participant is proceeding in good faith and with due diligence to cure such default), and Lessee shall accept such performance as if the same had been performed by Lessor. In that regard, Lessor constitutes and appoints Agent and its respective designees as Lessor's agent and attorney in-fact with full power, in Lessor's name, place and stead, and at Lessor's cost and expense to perform any of Lessor's obligations according to the provisions of this Lease. Such appointment is coupled with an interest and is irrevocable. In this regard, each Agent and its designees are irrevocably granted full and complete access and right of entry to the Property by Lessor and Lessee for purposes of curing any default of Lessor declared to exist by Lessee under the terms of this Lease.

(d) At the written request of Agent or any relevant Participant, as the case may be, within ninety (90) days prior to the termination of this Lease for any reason, Lessee shall enter into a new or direct Lease of the Property with Agent and each relevant Participant, as the case may be, or any of their respective designees, which designee will be approved by Lessee, with such approval not to be unreasonably withheld, effective upon termination of the Lease. Such new or direct lease shall be effective as of the date of termination of this Lease, and shall be for the remainder of the term of this Lease at the rent and on all other agreements, terms, covenants and conditions of this Lease; provided, however, that no provision shall be contained in the new lease which relates to any default under this Lease that cannot reasonably be cured by Agent or such relevant Participant, as the case may be. On the execution of such new or direct lease, Lessee shall pay any and all sums which would at the time of execution and delivery thereof be



due under this Lease. Agent and such relevant Participant shall pay all necessary and reasonable expenses, including reasonable attorneys' fees and expenses incurred by Lessee in connection with Lessor's default as well as in connection with the preparation, execution and delivery of such new or direct lease.

(e) Except as otherwise expressly provided, no Participant shall be liable to perform any of Lessor's obligations under this Lease unless and until either such Person or any designee thereof shall become the owner of the Property and then only so long as it remains the owner of the Property.

Section 27.26. Counterparts, Memorandum.

This Lease may be simultaneously executed in multiple counterparts, each of which when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes. Lessee and Lessor agree that a memorandum of this Lease (and any amendment hereof) shall be executed and recorded at the direction of either Lessor or Lessee, but at Lessee's expenses, in the land records of the jurisdiction in which the Property is situated.

Section 27.27. Confidentiality.

Lessor and Lessee shall hold all non-public information arising from this Lease in accordance with their customary procedures for handling confidential information (except to the extent required by Applicable Law).

The parties hereto agree that no press release or other public disclosure shall be made by either of them or any of their respective agents concerning this transaction without the prior written consent of the other. However, Lessee agrees that a "tombstone" type advertisement may be placed by Lessor or any Holder after consummation of the transactions contemplated hereby; provided, however, that Lessor or such Holder agrees to inform Lessee thereof prior to placing such advertisement.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, Lessor and Lessee have duly authorized, executed and delivered this Lease as of the date first hereinabove set forth.

**LESSOR:**

**FU/DG INDIANOLA, LLC**

By:  
Name:  
Title:

**LESSEE:**

**DOLLAR GENERAL CORPORATION**

By:  
Name:  
Title:

IN WITNESS WHEREOF, Lessor and Lessee have duly authorized, executed and delivered this Lease as of the date first hereinabove set forth.

**LESSOR:**

**FU/DG INDIANOLA, LLC**

By:  
Name:  
Title:

**LESSEE:**

**DOLLAR GENERAL CORPORATION**

By:  
Name:  
Title:

## APPENDIX A

Unless otherwise specified or the context otherwise requires, the following rules of usage (the "Rules of Usage") shall apply:

- (a) any term defined below by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect;
- (b) words which include a number of constituent parts, things or elements, shall be construed as referring separately to each constituent part, thing or element thereof, as well as to all of such constituent parts, things or elements as a whole;
- (c) references to any Person include such Person's successors and assigns and in the case of an individual, the word "successors" includes such Person's heirs, devisees, legatees, executors, administrators and personal representatives;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing a gender include any gender;
- (f) the words "consent," "approve," "agree" and "request," and derivations thereof or words of similar import, mean the prior written consent, approval, agreement or request of the Person in question;
- (g) a reference to a part, clause, party, section, article, exhibit or schedule is a reference to a part and clause of, and a party, section, article, exhibit and schedule to, such Operative Document;
- (h) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and ordinances issued or otherwise applicable under that statute;
- (i) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (j) a reference to a party to a document includes that party's permitted successors and assigns;
- (k) the words "including" and "includes," and words of similar import, shall be deemed to be followed by the phrase "without limitation;"
- (l) the words "hereof" and "hereunder," and words of similar import, shall be deemed to refer to the Operative Document as a whole and not to the specific section or provision where such word appears;

(m) as the context shall require except in the case of an Event of Loss and other relevant circumstances which contemplate an occurrence with respect to the entire Property, a reference to the "Property" or "Improvements" shall be deemed to be followed by the phrase "or a portion thereof;"

(n) the Schedules and Exhibits of the Operative Documents are incorporated in the Operative Documents to which such Schedules and Exhibits are attached:

(o) the titles and headings of Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses are inserted as a matter of convenience and shall not affect the construction of the Operative Documents;

(p) references to any Operative Document includes all amendments, supplements, consolidations, replacements, restatements, extensions, renewals and other modifications thereof, in whole or in part; and

(q) any term defined in any Operative Document and used in any other Operative Document but not defined therein shall have the meaning given such term in the Operative Document in which such term is defined.

"Actual Knowledge" with respect to any Person, shall mean the present, conscious, actual knowledge of, or receipt of notice by (i) senior officers of such Person or the officers or employees of such Person charged with the oversight on its behalf of the Overall Transaction or (ii) with respect to a matter covered by a representation and warranty, those officers having responsibility for the matters covered by such representation and warranty.

"Additional Renewal Term" shall have the meaning specified in Section 5.01 of the Lease.

"Address" shall mean, subject to the rights of the party in question to change its Address in accordance with the terms of the Operative Documents:

(i) with respect to the Lessor, to FU/DG Indianola, LLC, One First Union Center, TW-6, Charlotte, NC 28288-0166. Attn: Abizar Rangwala, Vice President, facsimile number (704)383-8108 with a copy to: Timothy Danello, Senior Vice President and Assistant General Counsel, First Union Corporation, 301 South College Street, NC0630, Charlotte, NC 28288-0630, facsimile number (704) 383-0649;

(ii) with respect to Lessee, to Dollar General Corporation, 100 Mission Ridge, Goodlettsville, TN 37072, Attn: Treasurer, facsimile number (615) 855-4809, with a copy to the same address, Attn: Larry Wilcher, General Counsel, facsimile number (615) 855-5172;

(iii) with respect to Head Lessor, to First Union Commercial Corporation, One First Union Center, TW-6, Charlotte, NC 28288-0166, Ann: Abizar Rangwala, Vice President, Attn: facsimile number (704) 383-8108 with a copy to: Timothy Danello, Senior Vice President and Assistant General Counsel, First Union Corporation, 301 South College Street, NC0630, Charlotte, NC 28288-0630, facsimile number (704) 383-0649;

(iv) with respect to the Agent, to Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-0001, Attn: Donald MacKelcan, facsimile number (302) 651-1576, with a copy to Lewis C. Ledyard, III, Morris, James, Hitchens & Williams, LLP, 222 Delaware Avenue, P.O. Box 2306, Wilmington, Delaware 19899:2306, facsimile number (302) 571-1750; and

(v) with respect to the Servicer, to First Union National Bank. First Union Capital Markets, NC1075, 9739 Research Drive, URP-4, Charlotte, NC 28288-1075, Attention: Dollar General, Facsimile (704) 593-7735 with a copy to: Timothy Danello, Senior Vice President and Assistant General Counsel, First Union Corporation, 301 South College Street, NCO630, Charlotte, NC 28288-0630, facsimile number (704) 383-0649.

"Adjusted Net Worth" means the consolidated net worth of such Person in accordance with GAAP as determined for the most recent quarter for which financial statements are available (which in the case of any year end financial statements shall be audited) for such Person preceding the period of determination less (i) the amount of any and all guarantees made by such Person of obligations (which obligations would be on-balance sheet with respect to the below-described Affiliate) of (x) any Affiliate of such Person that holds beneficially or of record, five percent (5%) or more of the equity securities of such Person and (y) any Affiliate of any such Affiliate (other than Person and any subsidiaries of such Person whose financial statements are consolidated with such Person's financial statements) and (ii) intangible assets (including, without limitation, franchises, patents, patent applications, trademarks, brand names, good will and research and development expense), in the case of the foregoing as determined GAAP.

"Affiliate" of any Person shall mean any other Person directly or indirectly controlling, controlled by or under common control with, such Person and shall include, if such Person is an individual, members of the Family of such Person and trusts for the benefit of such individual. For purposes of this definition, the term, "control" (including the correlative meanings of the terms "controlling" "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"After-Tax Basis" means, with respect to any payment received or accrued by any Person, the amount of such payment (the "base payment") supplemented by a further payment (the "additional payment") to that Person so that the sum of the base payment plus the additional payment shall, after taking into account the amount of all Taxes required to be paid by such Person in respect of the receipt or accrual of the base payment and the additional payment (after any current credits or deductions arising therefrom and the timing thereof), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to U.S. federal, state and local income taxation at the highest marginal rates applicable to individuals or corporations (as the case may be) resident or domiciled in the jurisdiction where the recipient of such payment is located (or where the recipient indicates such payment will be required to be reported, if different).

"Agent" shall mean Wilmington Trust Company, a Delaware banking corporation, and each successor Agent, as Agent under the Note Purchase Agreement, and to the extent provided therein, under any other Operative Document.

"Alterations, shall mean alterations, improvements, installations demolitions, modifications, changes and additions to the Property, but shall not include Lessee's Equipment and Personality.

"Anticipated Lease Income" shall mean the amounts expected to be included in gross income with respect to this Lease including only (i) Interim Rent, Base Rent and Renewal Rent, if any, (ii) payments as a consequence of a sale or other disposition (other than in the case of the exercise of remedies after a Lease Event of Default) of the Property and (iii) an amount received pursuant to the indemnity set forth in Section 19.03.

"Applicable Laws" shall mean all existing and future applicable laws (including common laws), rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of any Governmental Authorities, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to the environment and those pertaining to the construction, use or occupancy of the Property). Applicable Laws shall include Environmental Laws.

"Appraisal" shall mean any appraisal required to be delivered on or prior to the Closing Date and any other appraisal provided by the Appraisal Procedure.

"Appraisal Procedure" shall mean the following procedure for determining any one or more of the Fair Market Sales Value of the Real Property or Equipment, the Fair Market Rental Value of the Real Property or Equipment or any other amount which may, pursuant to any provision of any Operative Document, be determined by the Appraisal Procedure: one Qualified Appraiser, chosen by the Lessor and approved by FSL Group, which approval shall not unreasonably be withheld, delayed or conditioned, but if the Lessee shall fail to agree with the selection of the Lessor's Qualified Appraiser then Lessee shall have the right to engage a Qualified Appraiser. However, if the Lessee fails to choose a Qualified Appraiser within twenty (20) Business Days after written notice from the Lessor of the selection of its Qualified Appraiser followed by a second notice (which notice shall specifically state that failure to select a Qualified Appraiser within ten (10) Business Days shall prohibit appointment of a Qualified Appraiser by the addressed party) given at least ten (10) Business Days prior to the expiration of such twenty-day period, then the appraisal by such appointed Qualified Appraiser shall be binding on the parties. If the two Qualified Appraisers cannot agree on a value within twenty (20) Business Days after the appointment of the second Qualified Appraiser, then a third Qualified Appraiser shall be selected by the two Qualified Appraisers or, failing agreement as to such third Qualified Appraiser within thirty (30) Business Days after the appointment of the second Qualified Appraiser, by the American Arbitration Association office in New York, New York. Each of the three Qualified Appraisers shall use its best efforts to cause its appraisal to be given within twenty (20) Business Days of the appointment of the third Qualified Appraiser (and in any event, as soon as practicable thereafter) and the appraisal of the Qualified Appraiser most different from the mean average of the other two shall be discarded and such mean average of

the remaining two Qualified Appraisers shall be binding on the parties; provided, that if the highest appraisal and the lowest appraisal are equidistant from the third appraisal, the third appraisal shall be binding on the parties. The fees and expenses of each Qualified Appraiser shall be borne equally by the parties for whom such appraisal is being prepared. Notwithstanding the foregoing, in the case of any appraisal arising from any Lease Event of Default, the Lessee shall bear all costs and expenses of the Qualified Appraiser, and in such case, the party whose default has necessitated the Appraisal shall have no right to object to or choose a Qualified Appraiser and such Qualified Appraiser shall be chosen at the sole discretion of the non-defaulting party.

"Approved Environmental Consultant" shall mean IVI Environmental, Inc. with respect to any environmental report provided on the Closing Date, and any other environmental consultant selected by Lessee and acceptable to Lessor that is registered as a "Registered Environmental Property Assessor" by the National Registry of Environmental Professionals, certified as a "Certified Environmental Professional" by the Academy of Board Certified Environmental Professionals, or holds an equivalent designation or certification by an equivalent certifying organization.

"Acquisition Notice" shall have the meaning specified in Section 4.01(a) of the Lease.

"Areas of Environmental Concern" shall have the meaning specified in Section 8.05(c) of the Lease.

"Assignment of Head Lease" shall mean the Assignment of Head Lease Rights dated as of June 1, 2000, by and between the Head Lessee, as assignor, and the Agent, as assignee, for the benefit of the Holders.

"Assignment of Lease" shall mean the Lease Assignment and Agreement dated as of June 1, 2000, by and among the Lessor, as assignor, and the Agent, as assignee, for the benefit of the Holders and the Head Lessor, with respect to the Lease.

"Authorized Officer" shall mean with respect to a Person if the Person is not an individual, any officer or principal of the Person, any trustee of the Person (if the Person is a trust), any general partner or joint venturer of the Person (if the Person is a partnership or joint venture) or any manager of a manager-managed limited liability company or any member of a member-managed limited liability company, in each case who shall be duly authorized to execute the Operative Documents or take other action with respect thereto, as the case may be.

"Bankruptcy Code" shall mean the Bankruptcy Reform Act of 1978 as amended and as may be further amended.

"Base Rent" shall mean, for the Base Term, the rent payable pursuant to Section 3.01 of the Lease, as such Base Rent may be required to be adjusted in accordance with the first paragraph of Section 6 of the SNDA Agreement.

"Base Term" shall mean the period commencing on the day next succeeding the last day of the Interim Term and ending on June 30, 2022, or such shorter period as may result from the earlier termination of the Lease as provided therein.



"Bill of Sale" as the context applies, shall mean either of the Bill of Sale dated on or about the Closing Date executed by Seller on behalf of Head Lessor with respect to the Equipment or the Bill of Sale dated on or about the Closing Date executed by Seller on behalf of Lessor with respect to the Improvements and Fixtures, and "Bills of Sale" shall mean both of the above-referenced Bills of Sale.

"Board of Directors" with respect to a corporation, means either the Board of Directors or any duly authorized committee of that Board which pursuant to the by-laws of such corporation has the same authority as that Board as to the matter at issue.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks are authorized to be closed in the State of New York, the State of North Carolina or the State of Tennessee.

"Casualty" shall mean any damage or destruction caused to any Property by any reason, whether or not constituting an Event of Loss

"Claims" shall mean Liens (including, without limitation, lien removal and bonding costs) liabilities, obligations, damages, losses, demands, penalties, assessments, payments, fines, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including, without limitation, reasonable legal fees and expenses and costs of investigation) of any kind and nature whatsoever.

"Closing Date" shall mean the date on which the Real Property is acquired by the Lessor and the Equipment is acquired by the Head Lessor.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Condemnation" shall mean any condemnation, requisition or other taking or sale of the use, occupancy or title to any or all of the Property, by or on account of any eminent domain proceeding or other action by any Governmental Authority or other Person under the power of eminent domain or otherwise or any transfer in lieu of or in anticipation thereof.

"Confidential Information" shall mean all federal, state and local tax returns of any relevant Person and all work papers and support information related thereto; provided that "Confidential Information" shall exclude any items of income or expense of any Person for which an adjustment has been proposed and for which Lessee is obligated to provide as indemnity under Article XIX of the Lease to the extent the proposed adjustment does not relate to any other item of income or expense of such Person or such item of income and expense can be severed by the authority proposing the adjustment from any proposed adjustment to any other item of income and expense of such Person.

"Controlling Party" shall have the meaning specified in Section 19.02(e) of the Lease.

"Credit Party" shall mean Dollar General Corporation and its respective successors and assigns.

"Debt Documents" shall mean (i) the Note, (ii) the Mortgage, (iii) Note Purchase Agreement, (iv) the Assignment of Lease, (v) the Assignment of Head Lease, (vi) the SNDA Agreement, (vii) the Intercreditor Agreement and (viii) UCC financing statements required to be filed in connection with any of the foregoing.

"Default Rate" shall mean three percent (3%) above the annual rate of interest set by First Union National Bank (or any successor thereto) as its "prime rate" from time to time. Such prime rate is not the lowest or best rate offered to customers of First Union National Bank.

"Environmental Laws" shall mean and include the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C.ss., 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.ss, 9601-9657, (CERCLA), the Hazardous Materials Transportation Act of 1975, 49 U.S.C.ss. 1801-1812, the Toxic Substances Control Act, 15 U.S.C. 2601-2671, the Clean Air Act, 42 U.S.C.ss., 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.ss., 136 et seq and all other federal, state, or local laws, ordinances, rules, orders, statutes, codes and regulations applicable to the Property and relating to the environment (i) relating to the environment, human health or natural resources; (ii) regulating, controlling or imposing liability or standards of conduct concerning Hazardous Materials; or (iii) regulating the clean-up or other remediation of the Property, as any of the foregoing may have been or may be amended, supplemented or supplanted from time to time.

"Environmental Reports" shall mean the reports and information covering the Property prepared by the Approved Environmental Consultant as a condition precedent to closing the transactions contemplated by the Operative Documents and any subsequent report or information covering the Property prepared by an Approved Environmental Consultant and delivered by the Lessee to the Lessor or Agent.

"Equipment" shall mean that property described on Exhibit B hereto with such alterations, modifications, replacements, substitutions or other improvements that may result with respect thereto in accordance with the terms of the Operative Documents.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974.

"ERISA Group" means Dollar General Corporation and: (i) each corporation, trade or business which is a member, with Dollar General Corporation, of a controlled group of corporations within the meaning of Code Section 414(b) and the regulations issued thereunder; (ii) each group of trades or businesses (whether or not incorporated) under common control with Dollar General Corporation, determined in accordance with Code Section 414(c) and the regulations issued thereunder; (iii) each organization (whether or not incorporated) which is a member with Dollar General Corporation of an affiliated service group as defined in Code Section 414(m) and the regulations issued thereunder; and (iv) any other entity, to the extent required to be aggregated with Dollar General Corporation under regulations issued pursuant to Code Section 414(o).

"Event of Loss" shall mean (y) the damage, by fire or otherwise, and whether total or partial, that (A) the Lessee in its commercially reasonable discretion shall determine that as a result of such damage the Property is no longer useful for its intended purpose, and (B) the cost of repair or restoration would exceed seventy-five percent (75%) of the Property Cost for such Property or (z) the permanent or material taking by Condemnation effecting (A) title to all or substantially all of the Property, or (B) the principal points of ingress or egress of the Property to public roadways, or (C) such a material part of the Land or the Improvement so as to have a material and adverse effect on the business of the Lessee. Any decision regarding whether the restoration of the balance of the Property is uneconomic or impractical shall be made by Lessee in good faith and evidenced by an Officer's Certificate of Lessee delivered to Lessor.

"Existing Rent" shall have the meaning specified in Section 27.20 of the Lease.

"FSL Group" shall mean Financial Structures Limited, a company organized under the laws of Bermuda.

"Fair Market Rental Value" with respect to the Property (or any portion thereof) shall mean the fair market monthly rental value that would be obtained in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor, in each case under no compulsion to lease, and neither of which is related to Lessor or Lessee or an Affiliate thereof, for the lease of such Property on the terms set forth, or referred to, in Article V of the Lease. Except for any determination to be made in connection with a Lease Event of Default (which shall be made based upon the actual condition of the Property (or relevant portion thereof)), such fair market rental value shall be calculated as the value for the use of such Property (or relevant portion thereof) assuming that such Property (or relevant portion thereof) is in the condition and repair required to be maintained by the terms of the Lease.

"Fair Market Sales Value" with respect to the Property (or any portion thereof) shall mean the fair market sales value that would be obtained in an arm's-length transaction between an informed and willing buyer (other than a lessee currently in possession) and an informed and willing seller, under no compulsion, respectively, to buy or sell, and neither of which is related to Lessor or Lessee, for the purchase of the Property (or relevant portion thereof). Except for any determination to be made in connection with a Lease Event of Default (which shall be made based upon the actual condition of the Property (or relevant portion thereof)), such Fair Market Sales Value shall be calculated as the value for such Property (or relevant portion thereof) using the same methodology as used in the appraisals delivered on or before the Closing Date (and if more than one methodology is used i.e., based on a methodology that includes as an assumption that the Lease is in effect and a methodology that includes an assumption that the Lease is not in effect and no opinion is given as to one value, then using the methodology that results in the highest value) and assuming that the Property (or relevant portion thereof) is in the condition and repair required to be maintained by the terms of the Lease.

"Fair Market Sales Value (Dark)" with respect to the Real Property shall mean the fair market sales value that would be obtained in an arm's-length transaction between an informed and willing buyer and an informed and willing seller, under no compulsion, respectively, to buy or sell, and neither of which is related to Lessor or Lessee, for the purchase of the Real Property, assuming that the Real Property (i) is in the condition and repair required to be maintained by the

terms of the Lease, (ii) is unencumbered by the Lease or any other tenancy and (iii) is vacant and available for immediate occupancy.

"Filing" shall have the meaning specified in Section 19.020) of the Lease.

"Final Governmental Approval" shall have the meaning specified in Section 8.05(c) of the lease.

"Final Payment Date" shall have the meaning specified in Section 17.01(e) of the Lease.

"First Renewal Term" shall have the meaning specified in Section 5.01 of the Lease.

"Fitch" shall mean Fitch IBCA Inc. and its successors.

"Fixtures" shall have the meaning specified in the term "Property."

"GAAP" shall mean generally accepted accounting principles in the United States, as in effect from time to time, consistently applied.

"Governmental Action" shall mean all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments or decrees (to the extent directly applicable to the Property or any portion thereof, the Lessor or the Lessee), licenses, exemptions, required by, any Governmental Authority, or required by any Applicable Laws, and shall include, without limitation, all sitings, environmental and operating permits and licenses that are required for the use, occupancy, zoning and operation of the Property.

"Governmental Authority" shall mean any federal, state, county, municipal or other governmental or regulatory authority, agency, board, body, instrumentality, court or quasi governmental authority (or private entity in lieu thereof).

"Hazardous Material" shall mean any substance, waste or material (including those that are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, including petroleum, its derivatives, by-products and other hydrocarbons and asbestos), in each case that is or becomes defined by any Governmental Authority as a hazardous substance, hazardous material, toxic pollutant, toxic substance or hazardous waste and is either (a) regulated by any Governmental Authority, including any agency, department, commission, board or instrumentality of the United States and/or each State in which the Property is situated, or (b) may form the basis of liability under any Environmental Law.

"Head Lessor" shall mean First Union Commercial Corporation, a North Carolina corporation.

"Holder" shall mean, as of any particular date, any holder of one or more Note as of such date.

"Impositions" shall mean, collectively, all real estate taxes on the Property, all ad valorem, sales and use, single business, gross receipts, transaction privilege, rent or similar taxes levied or incurred with respect to the Property, or the use, lease, ownership or operation thereof.

personal property tax on any Property that is classified by government authorities as personal property, assessments (including all assessments for public improvements or benefits, whether or not commenced or completed within the Lease Term), water, sewer, utilities or other rents and charges, excises, levies, fees and all other governmental charges of any kind or nature whatsoever, general or special, foreseen or unforeseen, ordinary or extraordinary, with respect to the Property or any part thereof and/or the Rent, including all interest and penalties thereon, which at any time prior to, during or with respect to the Lease Term may be assessed or imposed, on or with respect to or be a Lien upon Lessor or the Property or any part thereof or any rent therefrom or any estate, title or interest therein. Impositions shall exclude, however, and nothing contained in the Lease or any other Operative Document shall be construed to require Lessee to pay, (i) any tax imposed on any Participant based on the net income of such Participant, except to the extent that any tax described in this clause (i) is levied, assessed or imposed as a total or partial substitute for a tax, assessment, levy or charge upon the Property, the Rent or any part thereof or interest therein which Lessee would otherwise be required to pay thereunder or except to the extent arising from a transfer of the Property or any portion thereof upon the exercise of remedies upon a Lease Event of Default; (ii) any tax imposed with respect to the sale, exchange or other disposition of the Property or any portion thereof by Lessor or the Holders or Agent or the proceeds thereof except a transfer arising from the exercise of remedies upon a Lease Event of Default; or (iii) any gross receipts, transaction privilege, doing business or similar tax, assessment, levy or charge upon Lessor, the Property or any part of any thereof or interest therein, but solely to the extent that the same is levied, assessed or imposed as a total or partial substitute for a tax, assessment, levy or charge described in clause (i) or clause (ii) which Lessee would otherwise not be required to pay hereunder.

"Improvements" shall have the meaning specified in the term "Property."

"Inclusion" shall have the meaning specified in Section 19.03(b) of the Lease.

"Indebtedness" shall mean the indebtedness evidenced by the Notes and secured by the Mortgage, and any replacement indebtedness thereof.

"Indemnitee" shall mean Lessor, any Holder, Agent, Servicer, any trustee under a Mortgage which is a deed of trust, the Proceeds Trustee, Head Lessor, each of their assignees or other transferees and each of their Affiliates and their respective officers, directors, employees, shareholders, members or other equity owners.

"Indemnity Agreement" shall mean that Indemnity Agreement dated as of June 1, 2000 made by Lessor and First Union Development Corporation, as the sole member of Lessor for the benefit of Head Lessor, and any similar indemnity agreement entered into by any successor Lessor and any member thereof or any successor member of member of the Lessor.

"Initial Appraiser" shall mean Sheets Hendrickson & Associates with respect to the Real Property and Collateral Evaluation Associates, Inc., with respect to the Equipment.

"Inspecting Parties" shall have the meaning specified in Article XV of the Lease.

"Intent to Renew Date" shall have the meaning specified in Section 5.01 (b)(i) of the Lease.

"Interim Rent" shall mean, for the Interim Term, the rent payable under Section 3.01 of the Lease.

"Interim Term" shall mean the period commencing on the Closing Date and ending on June 30, 2000, or such shorter period as may result from earlier termination of the Lease as provided therein.

"Investment Grade," with respect to any Person, so long as the senior unsecured obligations of such Person shall be publicly rated, shall mean that the senior unsecured obligations of such Person shall have a public rating of BBB+ (or higher) by Standard & Poor's and Baal (or higher) by Moody's, and if the senior unsecured obligations of such Person shall not be rated, such Person shall have a confidential debt rating, or a private internal classification, a private debt credit assessment by the Securities Valuation Office of NAIC or a NAIC I designation by the Securities Valuation Office of NAIC.

"Issuer" shall mean FU/DG Indianola, LLC, a Delaware limited liability company, as issuer under the Note Purchase Agreement.

"Land" shall have the meaning specified in the term "Property."

"Lease" shall mean the Lease Agreement dated as of June 1, 2000, between Lessor, as lessor, and Lessee, as lessee.

"Lease Default" shall mean any event, condition or failure which, with notice or lapse of time or both, would become a Lease Event of Default.

"Lease Event of Default" shall have the meaning specified in Article XVI of the Lease.

"Lease Expiration Date" shall have the meaning specified in Section 27.20 of the Lease.

"Lease Term" shall mean the full term of the Lease, including the Interim Term, Base Term and any Renewal Terms as to which Lessee exercises a renewal option pursuant to Article V of the Lease, or such shorter period as may result from earlier termination of the Lease as provided therein.

"Lease Year" shall mean each consecutive period of twelve (12) full calendar months occurring after the Closing Date; provided, however, that, if the Closing Date shall not be the first day of a month, then the first Lease Year shall also include the partial month in which the Closing Date occurs.

"Lessee" shall mean Dollar General Corporation, a Tennessee corporation.

"Lessee-Controlled Contest" shall have the meaning specified in Section 19.02(e) of the Lease.

"Lessee's Equipment and Personality" shall mean all Lessee's personal property and trade fixtures including, without limitation, Lessee's inventory, non-building equipment, non-

building machinery, racking, shelving, conveyer equipment, lifts, tractors, trailers and other vehicles used in the operation of Lessee's distribution center and trucking operation.

"Lessee Obligation" shall mean each and every obligation of the Lessee in whatever capacity arising under each Operative Document to which Lessee is a party and, in the event that any payment made by Lessee in connection with any Lessee Obligation shall be required to be restored or is rescinded or disgorged, such restoration, rescission or disgorgement shall result in such obligations becoming a Lessee Obligation.

"Lessor" shall mean FU/DG Indianola, LLC, a Delaware limited liability company, and as the context may require, in such other capacity as may be described in any other Operative Document.

"Lessor Liens" shall mean Liens on or against the Property or the Lease or any payment of Rent (a) which result from any act of, or any Claim against, Lessor or Head Lessor, or which result from any violation by Lessor or Head Lessor of any of the terms of the Operative Documents other than a violation due to a default by Lessee under the Lease or, with respect to the Head Lessor, a default by the Head Lessee under the Head Lease, (b) which result from Liens in favor of any taxing authority by reason of any Tax owing and payable by Lessor or Head Lessor, except that Lessor Liens shall not include any Lien resulting from any Tax for which Lessee is obligated to indemnify Lessor or Head Lessor (or any other Indemnitee), or (c) which result from any expenses owed, caused or occasioned by Lessor or Head Lessor or any of their employees or agents which are not indemnified by Lessee pursuant to Section 19.01 of the Lease, but shall exclude Permitted Liens and any Liens created by the Debt Documents and the Head Lease.

"Lessor Property" shall mean the right, title and interest of the Lessor in the Property, including Lessor's leasehold interest in the Equipment.

"Lien" shall mean any lien, mortgage, pledge, charge, security interest or encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, including, without limitation, any thereof arising under any conditional sale agreement, capital lease or other title retention agreement.

"Loan" shall have the meaning specified in the recitals to the Note Purchase Agreement.

"Loss" shall have the meaning specified in Section 19.03(b) of the Lease.

"Make-Whole Premium" in respect of a prepayment of the principal of any Secured Note and accrued interest, if any (such prepaid principal amount of such Note being hereinafter referred to as the "Prepaid Principal"), shall be calculated by the Issuer and certified to the Agent in an Officer's Certificate and mean the greater of (a) one percent (1%) and (b) the excess of:

(i) the sum of the respective present values as of the date such Make-Whole Premium becomes due and payable of: (A) each payment of a scheduled installment of principal required to be made with respect to such Prepaid Principal during the remaining term to maturity of such Note, (B) without duplication, the payment of the principal balance, if any, required to be made at final maturity with respect to such Prepaid

Principal, and (C) each payment of interest which would be required to be paid during the remaining term to maturity of such Note with respect to such Prepaid Principal, determined, in the case of each such required principal payment prior to maturity, principal payment at final maturity and interest payment, by discounting the amount thereof (on a monthly basis) from the date fixed therefor back to the date such Make-Whole Premium becomes due and payable at the Reference Rate (assuming for such purpose that all such payments were made when due pursuant to the terms thereof and hereof, and that no other payment with respect to such Prepaid Principal was made), minus

(ii) the outstanding principal amount of the Note plus accrued interest, if any.

"Material Adverse Effect" shall mean any event, state of facts, circumstance or condition (a) with respect to any Person regarding whom a determination is to be made that could reasonably be expected to result in a decrease of at least five percent (5%) in the tangible net worth of such Person (excluding for these purposes good will, intangible assets and any upward adjustments in any asset from book value) based upon GAAP consistently applied,

(b) that could reasonably be expected to result in the invalidity or unenforceability of any Operative Document or the inability of any Person to exercise rights and remedies intended to afford such parties of the practical realization of the benefits intended to be available to them under the Operative Documents, (c) that could reasonably be expected to result in the invalidity or failure of priority or enforceability of any Lien on any Property created, or intended to be created by, any of the Operative Documents or (d) that could reasonably be expected to result in a decline of the value of the Land, Improvements and Fixtures or useful life thereof by five percent (5%) or more or the loss of use, or inability of the Lessee or the Head Lessee, as the case may be, to use, five percent (5%) of the Land, Improvements and Fixtures for the purposes for which it was intended.

"Memorandum of Lease" shall mean that certain Memorandum of Lease dated as of June 1, 2000, between Lessor and Lessee related to the Property.

"Moody's" shall mean Moody's Investors Service, Inc. and its successors.

"Mortgage" shall mean that certain Deed of Trust and Security Agreement dated as of June 1, 2000 herewith, relating to the Real Property as the same may be renewed, amended, modified, consolidated, replaced or extended.

"Mortgaged Property" shall mean the property the subject of the Mortgage.

"NAIC" shall mean the Securities Valuation Office of the National Association of the Insurance Commissioners and any successor thereto.

"Net Casualty Proceeds" with respect to the Property (or any portion thereof), shall mean the compensation and/or insurance payments net of the reasonable expenses of collecting such amounts incurred by any Person and received by the Lessee or its assignee or designee (including the Agent) in respect of the Property (or any portion thereof) by reason of and on account of a Casualty.



"Net Condemnation Proceeds" with respect to the Property (or any portion thereof), shall mean any award or compensation net of the reasonable expenses of collecting such amounts incurred by any Person and received by the Lessee or its assignee or designee (including the Agent) in respect of the Property (or any portion thereof) by reason of and on account of a Condemnation.

"Net Proceeds" shall mean Net Casualty Proceeds or Net Condemnation Proceeds as the context may require.

"Noncontrolling Party" shall have the meaning specified in Section 19.02(e) of the Lease.

"Nonseverable" shall describe an elective Alteration or part of an elective Alteration which cannot be removed from the existing Improvements, the Land or the Equipment without causing material damage to the Property, provided, that Lessee's Equipment and Personality and the Equipment shall not be construed as Nonseverable.

"Note Purchase Agreement" shall mean the Note Purchase Agreement dated as of June 1, 2000 among the Issuer, the Holders and the Agent.

"Note Purchase Agreement Default" shall mean a "Default" as defined in the Note Purchase Agreement.

"Note Purchase Agreement Event of Default" shall mean an "Event of Default" as defined in the Note Purchase Agreement.

"Notes" shall mean the Notes issued under the Note Purchase Agreement and secured by the Mortgage.

"NRSRO" shall mean a nationally recognized statistical rating organization, which as of this date would include Standard & Poor's, Moody's and Fitch IBCA Inc.

"Officer's Certificate" of a Person or any Person signing on behalf of a Person shall mean a certificate signed, in the case of a partnership, by a general partner of such partnership, or in the case of a limited liability company, by a member of such limited liability company, or in the case of a corporation, by an Authorized Officer of such Person. Each Officer's Certificate delivered to any Person under any Operative Agreement shall include a statement that the signatory (a) has reviewed the activities of the entity on whose behalf the Officer's Certificate is being given with respect to the subject matter for which such Officer's Certificate is requested, (b) is familiar with the provisions of the relevant Operative Document to which the requested Officer's Certificate relates and (c) has, in such signatory's opinion, made such examination or investigation as is necessary to enable such signatory to act on an informed basis in responding to such request.

"Operative Documents" shall mean the Sale and Purchase Agreement, the Debt Documents, the Lease, the Memorandum of Lease, the SNDA Agreement, the Deed, the Bills of Sale and other instruments of transfer in connection with the Property, including the Equipment, The Head Lease, the Intercreditor Agreement, the Indemnity Agreement, the Special Indemnity

Agreement and the UCC financing statements required to be executed and delivered in connection with the foregoing, collectively.

"Oral Licensee" shall have the meaning specified in Section 20.01(n)(xiv) of the Lease.

"Overall Transaction" shall mean all the transactions and activities referred to in or contemplated by the Operative Documents.

"Participant" shall mean shall mean Lessor, any Holder, Agent, Servicer, any trustee under a Mortgage which is a deed of trust, the Proceeds Trustee, Head Lessor, each of their assignees or other transferees and each of their Affiliates and their respective officers, directors, employees, shareholders, members or other equity owners.

"Permits" shall mean as to the Property all licenses, authorizations, certificates, variances, concessions, grants, registrations, consents, permits and other approvals issued by a Governmental Authority now or hereafter pertaining to the ownership, management, occupancy, use or operation of such Property, including certificates of occupancy.

"Permitted Encumbrances" shall mean the easements, rights of way, reservations, servitudes and rights of others against the Property which are listed in the Title Policy issued to the Lessor or the Agent (as applicable).

"Permitted Investments" shall mean any one or more of the following obligations or securities having (a) a predetermined fixed dollar of principal due at maturity that cannot vary or change, (b) bearing interest that may either be fixed or variable but which is tied to a single interest rate index plus a single fixed rate spread (if any) and move proportionately with that index, and (c) having the required ratings, if any, provided for in this definition:

- (i) investments in direct obligations of the United States of America or any agency thereof having maturities of less than one year;
- (ii) investments in commercial paper maturing within one year from the date of creation thereof of the highest credit rating of a Rating Agency (or, in the case of Standard & Poor's, one of the two highest credit ratings);
- (iii) investments in bankers' acceptances, certificates of deposit and commercial money market funds having maturities of less than one year issued by commercial banks in the United States of America having capital and surplus in excess of \$50,000,000;
- (iv) repurchase obligations with a term of not more than one year for underlying securities of the types described in clauses (i) and (iii) above entered into with a counterparty whose short-term securities are of the highest credit rating of any NRSRO (or, in the case of Standard & Poor's, one of the two highest credit ratings); and
- (v) freely redeemable shares in money market funds which invest solely in securities of the types described in clauses (i), (ii), (iii) and (iv) and rated in the highest

rating category by any NRSRO (or, in the case of Standard & Poor's, one of the two highest rating categories).

"Permitted Liens" shall mean:

(a) the respective rights and interests of the parties under the Operative Documents.

(b) Liens for Taxes either not yet due or being contested in good faith and by appropriate proceedings, so long as such proceedings shall not involve any material danger of the sale, forfeiture or loss of any part of the Property, title thereto or any interest therein and are undertaken in accordance with the terms of any documents securing the Indebtedness (including, without limitation, posting of any Notes or other collateral to the extent required by such documents),

(c) materialmen's, mechanics', workers', repairmen's, employees or other like Liens for amounts either not yet due or being contested in good faith and by appropriate proceedings so long as such proceedings shall not involve any material danger of the sale, forfeiture or loss of any part of the Property, title thereto or any interest therein; provided, Lessee agrees that it shall pay, discharge of record or note any such Lien within thirty (30) days after knowledge of the filing thereof,

(d) Liens arising out of judgments or awards with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and either which have been bonded or for the payment of which adequate reserves shall have been provided to Lessor's reasonable satisfaction: provided, that, if the long-term unsecured debt is then rated by either Rating Agency, such debt, shall not be rated Investment Grade, then any such amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000), shall be bonded or discharged by Lessee within thirty (30) days after Lessee's, knowledge thereof, and

(e) assignments and subleases that comply with the terms of the Lease.

"Person" shall mean an individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, non-incorporated organization or government or any agency or political subdivision thereof.

"Plan" shall have the meaning specified in Section 8.05(c) of the Lease.

"Proceeds Trustee" shall mean the Servicer or, if a Property affected by a Casualty or a Condemnation shall not at the time in question be encumbered by a Mortgage, a federally insured bank or other financial institution, selected by Lessor and reasonably satisfactory to Lessee.

"Property" shall mean the real property whose parcel or parcels of land are described on Exhibit B to the Lease (the "Land"), together with all buildings, structures and other improvements of every kind situated on the Land (collectively, the "Improvements"), together with all easements, rights and appurtenances relating to the Land or the Improvements, and

together with all fixtures, including all components thereof, on and in respect to the Improvements, including, without limitation, all built-in equipment used in the operation of the Property, together with all replacements, modifications, alterations and additions thereto (collectively, the "Fixtures"); provided, that in no event shall "Property" include Lessee's Equipment and Personality. As the context requires, Property shall include the Equipment or the right, title and interest of the Lessor in the Property, including the Lessor's leasehold interest in the Equipment.

"Proposed Adjustment" shall have the meaning specified in Section 19.03(c) of the Lease.

"Qualified Appraiser" with respect to the Real Property, means an independent appraiser who shall be a member of The Appraisal Institute (or its successor organization) with not less than ten (10) years' experience appraising properties similar to the Land, Improvements and Fixtures constituting a portion of the Property in the market in which the Property is located.

"Rating Agencies" shall mean Moody's, Standard & Poor's and Fitch IBCA Inc., or at the Lender's election, another NRSRO.

"Real Property" shall mean all real property and other property, if any, subject to the Lease, specifically including the Land, Improvements and Fixtures, but excluding the Equipment.

"Reference Rate" shall mean, with respect to any specified amount: (I) first, a yield shall be computed by using linear interpolation to the Remaining Weighted Average Life (defined below) between the Reference Treasury Yields (defined below) of two maturities, (i) one maturity as close as possible to, but less than or equal to, the Remaining Weighted Average Life of such specified amount and (ii) the other maturity as close as possible to, but greater than, the Remaining Weighted Average Life of such specified amount, provided, that if the Remaining Weighted Average Life is less than or equal to the shortest maturity of the Reference Treasury Yields, the yield shall equal such Reference Treasury Yield or the shortest maturity; (II) such determined yield then being expressed as a monthly equivalent as a decimal, with the result being the applicable Reference Rate. "H.15(519)" means the weekly statistical release designated as such, or any successor publication, of the Board of Governors of the Federal Reserve System, or if such statistical release is no longer published, any publicly available source of similar market data. In the case that Reference Rate is being used for the determination of Make-Whole Premium, the date of determination of a Make-Whole Premium is the fifth Business Day preceding the date such amount becomes due and payable. "Remaining Weighted Average Life" with respect to any specified amount shall mean, as applicable to a prepayment date, the number of years obtained by computing the quotient of (A) the Remaining Dollar Years (defined below) by (B) the aggregate principal or other relevant amount of such specified amount then outstanding. The term "Remaining Dollar Years" of such specified amount shall mean the product obtained by multiplying (1) the amount of each then remaining principal payment or other relevant payment amount for such specified amount (including the principal payment at final maturity), by (2) the number of years (rounded to the nearest one-twelfth) which will elapse between such prepayment date and the date such payment of principal is due. The term "Reference Treasury Yields" shall mean the most recent weekly Average yields of those

elements of the Treasury constant maturity series as published in the most recent H.15(519) corresponding to "on the run" United States Treasury securities traded in the public markets at the time of determination: provided, if a determination is being made in connection with any prepayment of the Notes arising from a Lease Event of Default, an additional 50 basis points shall be added thereto.

"Refinancing" shall mean any refinancing of the Indebtedness.

"Refusal Offer" shall have the meaning specified in Section 4.01(a) of the Lease.

"Reimbursement Date" shall have the meaning specified in Section 19.02(c) of the Lease.

"Release" shall mean the release under applicable Environmental Laws or threatened release of any Hazardous Material into or upon or under any land or water or air, or otherwise into the environment, including, without limitation, by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouting, escaping, emptying, placement and the like.

"Remedial Action" means the investigation, clean-up, remediation or removal required by Environmental Law of contamination, environmental degradation or damage caused by, related to or arising from the existence, generation, use, handling, treatment, storage, transportation, disposal, discharge, release (including a continuous release), or emission of Hazardous Material, including, without limitation, investigations, response and remedial actions required under CERCLA, corrective action required under the Resource Conservation and Recovery Act of 1976, as amended, the investigation, removal or closure of any underground storage tanks, and any related soil or groundwater investigation, cleanup remediation or removal, and other investigation, clean-up, removal or remediation required under or necessary to comply with any Environmental Laws.

"Renewal Rent" shall mean the meaning specified in Section 5.01(b) of the Lease.

"Renewal Term" shall have the meaning specified in Section 5.01 of the Lease.

"Rent" shall mean Interim Rent, Base Rent, Renewal Rent and Supplemental Rent. collectively.

"Rent Account" shall have the meaning specified in Section 3.03 of the Lease.

"Rent Commencement Date" shall mean the Closing Date, which shall be the date on which Interim Rent and Head Lease Interim Rent commence under the Lease and Head Lease respectively, unless such day is the first calendar day of a month, in which case, Base Rent and Head Lease Base Rent shall commence under the Lease and the Head Lease respectively.

"Rent Commencement Date" shall mean the Closing Date.

"Rent Payment Date" shall mean the last Business Day of each month during the Lease Term or the Head Lease Term, as the case may be.

"Required Remedial Action Date" shall have the meaning specified in Section 8.05(c) of the Lease.

"Restoration Fund" shall have the meaning specified in Section 12.04(a) of the Lease.

"Right of First Refusal" shall have the meaning specified in Section 4.01 of the Lease.

"Sale and Purchase Agreement" shall mean the Sale and Purchase Agreement dated as of June 1, 2000 between together with Lessee, as a seller, and Lessor and Head Lessor, as purchaser with respect to the Property and acknowledged and agreed by the Holders.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Self-Insurance Amount" shall have the meaning specified in Section 9.0 1(b) of the Lease.

"Seller" shall mean Atlantic Financial Group, Ltd., a Texas limited partnership, and Lessee collectively.

"Servicer" shall mean First Union National Bank, a national banking association, any replacement thereof and the successors and assigns of the foregoing.

"Single Purpose Entity" shall mean a Person, other than an individual, which (i) is formed or organized solely for the purpose of holding an ownership interest in the Property (except the portion of the Property constituting Equipment, in which case such Person shall hold a leasehold estate therein and any other rights, titles or benefits relating to the Equipment arising from or out of the Head Lease or any option thereunder), (ii) does not engage in any business unrelated to the Property, (iii) does not have any assets other than those related to its interest in the Property, receipts therefrom or proceeds therefrom or any indebtedness other than as permitted by the other Operative Documents, (iv) has its own separate books and records and has its own accounts in each case which are separate and apart from the books and records and accounts of any other Person, and (v) at all times has, or in the case of a limited partnership, has a corporate general partner which has, or in the case of a limited liability company, has a corporate manager (or, if the manager of the limited liability company is a partnership, such partnership has a corporate general partner) which has, one independent manager or independent director

"SNDA Agreement" shall mean the Lease Subordination, Non-Disturbance and Attornment Agreement dated as of June 1, 2000 among the Lessor, Lessee, the Head Lessor and the Agent.

"Special Indemnity Agreement" shall mean that Indemnity Agreement dated as of June 1, 2000 made by Lessee for the benefit of the Head Lessor and acknowledged by the Agent and Holders which provides for the exercise of certain rights and remedies against the Lessee and the Equipment as indemnity claims in the event of a Lease Event of Default.

"Special Purpose Representations and Warranties" shall have the meaning specified in Section 25.01(a) of the Lease.

"Standard & Poor's" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

"Sublease" shall have the meaning given such term in Section 14.01 of the Lease.

"Substitute Property" shall mean a property that is substituted by Lessee pursuant to Article XXIII or Section 12.01 of the Lease for an Affected Property in accordance with Article XXIII of the Lease and that is substituted as collateral by Lessor pursuant to Section 20.07 of the Note Purchase Agreement.

"Supplemental Rent" shall mean the Make-Whole Premium and any and all amounts, liabilities, obligations, late charges and Impositions other than Base Rent which Lessee assumes or agrees or is otherwise obligated to pay under the Lease and the Operative Documents (whether or not designated as Supplemental Rent) to any Person, including Fair Market Sales Value payments, Termination Value payments, and indemnities and damages for breach of any covenants, representations, warranties or agreements.

"Surviving Corporation" shall have the meaning specified in Section 20.03(b) of the Lease.

"Tangible Net Worth" means with respect to any Person, as of any date of determination, the sum of capital stock and additional paid-in capital (net of treasury stock) plus retained earnings or capital surplus, as the case may be (or minus any accumulated deficit), minus intangible assets (including, without limitation, franchises, patents, patent applications, trademarks, branch names, good will and research and development) determined on a consolidated basis and in conformity with GAAP.

"Tax Counsel" shall have the meaning specified in Section 19.02(e) of the Lease.

"Tax Indemnitee" shall mean Lessor, any Holder, Agent, Servicer, any trustee under a Mortgage which is a deed of trust, the Proceeds Trustee, Head Lessor, each of their assignees or other transferees and each of their Affiliates and their respective officers, directors, employees, shareholders, members or other equity owners.

"Tax Party" shall have the meaning specified in Section 19.03(c) of the Lease.

"Taxes" shall mean any and all present and future taxes, including income (gross or net), gross or net receipts, sales, use, value added, franchise, doing business, transfer, capital, property (tangible or intangible), municipal assessments, excise and stamp taxes, levies, imposts, duties, charges, assessments or withholding, together with any penalties, fines or interest thereon or additions thereto (any of the foregoing being referred to herein individually as a "Tax"), imposed by any Governmental Authority. Taxes shall include the costs of any contest or appeal pursued which reduces the Taxes (or attempts to do so) including reasonable attorney's fees and costs incident thereto. Without limiting the foregoing, if at any time during the term of the Lease the methods of taxation prevailing at the execution thereof shall be changed or altered so that in lieu of or as a supplement or addition to or a substitute for the whole or any part of the real estate taxes or assessments now or from time to time, thereafter levied, assessed or imposed by applicable taxing authorities for the funding of governmental services, there shall be imposed

(i) a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise, on the rents received from or otherwise attributable to the Property, or (ii) a tax, assessment, levy (including but not limited to any municipal, state or federal levy), imposition or charge measured by or based in whole or in part upon the Property or the Lease or the Head Lease, and imposed on the Lessor under the Lease, the Head Lessor under the Head Lease or any portion thereof, or (iii) a license fee or other fee or tax measured by the rent payable under the Lease or the Head Lease, or (iv) any other tax, assessment, levy, charge, fee or the like payable with respect to the Property, the rents, issues and profits thereof, the Lease, the Head Lease or the rents and charges payable pursuant thereto, then all such taxes, assessment, levies, impositions and/or charges, or the part thereof so measured or based shall be deemed to be Taxes.

"Term" shall mean the Interim Term, the Base Term and any Renewal Term.

"Termination Value" shall mean on the Termination Value Date or the date payment is to be made under Section 12.01 if Lessor rejects Lessee's offer to purchase, as the case may be, (i) during the Base Term, the value listed on Schedule 12.01 to the Lease for such Property as of such date and (ii) during a Renewal Term, the Fair Market Sales Value of such Property as of such date.

"Termination Value Date" shall have the meaning specified in Section 12.0 1(a) of the Lease and after the expiration of the Base Term shall mean the first day of each month during a Renewal Term.

"Title Insurance Company" shall mean Old Republic National Title Insurance Company

"Title Policy" shall mean the title insurance policy issued by the Title Insurance Company to Lessor pursuant to the Sale and Purchase Agreement, and to the Agent pursuant to the Note Purchase Agreement on the Closing Date.

"Transfer" shall have the meaning specified in Section 19.02(b) of the Lease.

"UCC" shall mean the Uniform Commercial Code as enacted in the state in which Property is located, or any other applicable Uniform Commercial Code.

"Verifier" shall have the meaning specified in Section 19.02(g) of the Lease.

"Warranties" shall have the meaning specified in Section 6.02 of the Lease.

"Withdrawn Property" shall have the meaning specified in Section 23.01 of the Lease.



### 3.01 - Base Rent Schedule

Note: Base Rent is due on the last business day of the month.

Period	Month end Date	Indianola Rent Schedule
Interim	30-Jun-00	\$384,404.10
1	31-Jul-00	\$397,659.41
2	31-Aug-00	\$397,659.41
3	30-Sep-00	\$397,659.41
4	31-Oct-00	\$397,659.41
5	30-Nov-00	\$397,659.41
6	31-Dec-00	\$397,659.41
7	31-Jan-01	\$397,659.41
8	28-Feb-01	\$397,659.41
9	31-Mar-01	\$397,659.41
10	30-Apr-01	\$397,659.41
11	31-May-01	\$397,659.41
12	30-Jun-01	\$397,659.41
13	31-Jul-01	\$397,659.41
14	31-Aug-01	\$397,659.41
15	30-Sep-01	\$397,659.41
16	31-Oct-01	\$397,659.41
17	30-Nov-01	\$397,659.41
13	31-Dec-01	\$397,659.41
19	31-Jan-02	\$397,659.41
20	28-Feb-02	\$397,659.41
21	31-Mar-02	\$397,659.41
22	30-Apr-02	\$397,659.41
23	31-May-02	\$397,659.41
24	30-Jun-02	\$397,659.41
25	31-Jul-02	\$397,659.41
26	31-Aug-02	\$397,659.41
27	30-Sep-02	\$397,659.41
23	31-Oct-02	\$397,659.41
29	30-Nov-02	\$397,659.41
30	31-Dec-02	\$397,659.41
31	31-Jan-03	\$397,659.41
32	28-Feb-03	\$397,659.41
33	31-Mar-03	\$397,659.41
34	30-Apr-03	\$397,659.41
35	31-May-03	\$397,659.41
36	30-Jun-03	\$397,659.41
37	31-Jul-03	\$397,659.41
38	31-Aug-03	\$397,659.41
39	30-Sep-03	\$397,659.41

### 3.01 - Base Rent Schedule

Note: Base rent is due on the last business day of the month.

Period	Month End Date	Indianola Rent Schedule
40	31-Oct-03	\$397,659.41
41	30-Nov-03	\$397,659.41
42	31-Dec-03	\$397,659.41
43	31-Jan-04	\$397,659.41
44	29-Feb-04	\$397,659.41
45	31-Mar-04	\$397,659.41
46	30-Apr-04	\$397,659.41
47	31-May-04	\$397,659.41
48	30-Jun-04	\$397,659.41
49	31-Jul-04	\$397,659.41
50	31-Aug-04	\$397,659.41
51	30-Sep-04	\$397,659.41
52	31-Oct-04	\$397,659.41
53	30-Nov-04	\$397,659.41
54	31-Dec-04	\$397,659.41
55	31-Jan-05	\$397,659.41
56	23-Feb-05	\$397,659.41
57	31-Mar-05	\$397,659.41
58	30-Apr-05	\$397,659.41
59	31-May-05	\$397,659.41
60	30-Jun-05	\$397,659.41
61	31-Jul-05	\$397,659.41
62	31-Aug-05	\$397,659.41
63	30-Sep-05	\$397,659.41
64	31-Oct-05	\$397,659.41
65	30-Nov-05	\$397,659.41
66	31-Dec-05	\$397,659.41
67	31-Jan-06	\$397,659.41
68	28-Feb-06	\$397,659.41
69	31-Mar-06	\$397,659.41
70	30-Apr-06	\$397,659.41
71	31-May-06	\$397,659.41
72	30-Jun-06	\$397,659.41
73	31-Jul-06	\$397,659.41
74	31-Aug-06	\$397,659.41
75	30-Sep-06	\$397,659.41
76	31-Oct-06	\$397,659.41
77	30-Nov-06	\$397,659.41
78	31-Dec-06	\$397,659.41
79	31-Jan-07	\$397,659.41

### 3.01 - Base Rent Schedule

Note: Base Rent is due on the last business day of the month.

Period	Month End Date	Indianola Rent Schedule
80	28-Feb-07	\$397,659.41
81	31-Mar-07	\$397,659.41
82	30-Apr-07	\$397,659.41
83	31-May-07	\$397,659.41
84	30-Jun-07	\$397,659.41
85	31-Jul-07	\$338,051.76
86	31-Aug-07	\$338,051.76
87	30-Sep-07	\$338,051.76
88	31-Oct-07	\$338,051.76
89	30-Nov-07	\$338,051.76
90	31-Dec-07	\$338,051.76
91	31-Jan-08	\$338,051.76
92	29-Feb-08	\$338,051.76
93	31-Mar-08	\$338,051.76
94	30-Apr-08	\$338,051.76
95	31-May-08	\$338,051.76
96	30-Jun-08	\$338,051.76
97	31-Jul-08	\$338,051.76
98	31-Aug-08	\$338,051.76
99	30-Sep-08	\$333,051.76
100	31-Oct-08	\$338,051.76
101	30-Nov-08	\$338,051.76
102	31-Dec-08	\$338,051.76
103	31-Jan-09	\$338,051.76
104	28-Feb-09	\$338,051.76
105	31-Mar-09	\$333,051.76
106	30-Apr-09	\$338,051.76
107	31-May-09	\$333,051.76
108	30-Jun-09	\$338,051.76
109	31-Jul-09	\$264,930.98
110	31-Aug-09	\$264,930.98
111	30-Sep-09	\$264,930.93
112	31-Oct-09	\$264,930.98
113	30-Nov-09	\$264,930.98
114	31-Dec-09	\$264,930.98
115	31-Jan-10	\$264,930.98
116	28-Feb-10	\$264,930.98
117	31-Mar-10	\$264,930.98
118	30-Apr-10	\$264,930.98
119	31-May-10	\$264,930.98

301 - Base Rent Schedule

Rent is due on the last business day of the month.

Period	Month End Date	Indianola Rent Schedule
120	30-Jun-10	264,930.98
121	31-Jul-10	264,930.98
122	31-Aug-10	264,930.98
123	30-Sep-10	264,930.98
124	31-Oct-10	264,930.98
125	30-Nov-10	264,930.98
126	31-Dec-10	264,930.98
127	31-Jan-11	264,930.98
128	28-Feb-11	264,930.98
129	31-Mar-11	264,930.98
130	30-Apr-11	264,930.98
131	31-May-11	264,930.98
132	30-Jun-11	264,930.98
133	31-Jul-11	264,930.98
134	31-Aug-11	264,930.98
135	30-Sep-11	264,930.93
136	31-Oct-11	264,930.98
137	30-Nov-11	264,930.98
138	31-Dec-11	264,930.98
139	31-Jan-12	264,930.98
140	29-Feb-12	264,930.98
141	31-Mar-12	264,930.98
142	30-Apr-12	264,930.98
143	31-May-12	264,930.98
144	30-Jun-12	264,930.98
145	31-Jul-12	264,930.98
146	31-Aug-12	264,930.98
147	30-Sep-12	264,930.98
148	31-Oct-12	264,930.98
149	30-Nov-12	264,930.98
150	31-Dec-12	264,930.98
151	31-Jan-13	264,930.98
152	28-Feb-13	264,930.98
153	31-Mar-13	264,930.98
154	30-Apr-13	264,930.98
155	31-May-13	264,930.98
156	30-Jun-13	264,930.98
157	31-Jul-13	264,930.98
158	31-Aug-13	264,930.98
159	30-Sep-13	264,930.98

### 3.01 - Base Rent Schedule

Note: Base Rent is due on the last business day of the month.

Period	Month End Date	Indianola Rent Schedule
160	31-Oct-13	\$264,930.98
161	30-Nov-13	\$264,930.98
162	31-Dec-13	\$264,930.98
163	31-Jan-14	\$264,930.98
164	28-Feb-14	\$264,930.98
165	31-Mar-14	\$264,930.98
166	30-Apr-14	\$264,930.98
167	31-May-14	\$264,930.98
168	30-Jun-14	\$264,930.98
169	31-Jul-14	\$264,930.98
170	31-Aug-14	\$264,930.98
171	30-Sep-14	\$264,930.98
172	31-Oct-14	\$264,930.98
173	30-Nov-14	\$264,930.93
174	31-Dec-14	\$264,930.98
175	31-Jan-14	\$264,930.98
176	28-Feb-15	\$264,930.98
177	31-Mar-15	\$264,930.98
178	30-Apr-15	\$264,930.98
179	31-May-15	\$264,930.98
180	30-Jun-15	\$264,930.98
181	31-Jul-15	\$264,930.98
182	31-Aug-15	\$264,930.98
183	30-Sep-15	\$264,930.98
184	31-Oct-15	\$264,930.98
185	30-Nov-15	\$264,930.98
186	31-Dec-15	\$264,930.98
187	31-Jan-16	\$264,930.98
188	29-Feb-16	\$264,930.98
189	31-Mar-16	\$264,930.98
190	30-Apr-16	\$264,930.98
191	31-Mar-16	\$264,930.98
192	30-Jun-16	\$264,930.98
193	31-Jul-16	\$264,930.98
194	31-Aug-16	\$264,930.98
195	30-Sep-16	\$264,930.98
196	31-Oct-16	\$264,930.98
197	30-Nov-16	\$264,930.98
198	31-Dec-16	\$264,930.38
199	31-Jan-17	\$264,930.98

### 3.01- Base Rent Schedule

Note: Base Rent is due on the last business day of the month.

Period	Month End Date	Indianola Rent Schedule
200	28-Feb-17	\$264,930.98
201	31-Mar-17	\$264,930.98
202	30-Apr-17	\$264,930.98
203	31-May-17	\$264,930.98
204	30-Jun-17	\$264,930.98
205	31-Jul-17	\$264,930.98
206	31-Aug-17	\$264,930.98
207	30-Sep-17	\$264,930.98
208	31-Oct-17	\$264,930.98
209	30-Nov-17	\$264,930.93
210	31-Dec-17	\$264,930.98
211	31-Jan-18	\$264,930.98
212	28-Feb-18	\$264,930.98
213	31-Mar-18	\$264,930.98
214	30-Apr-18	\$264,930.98
215	31-May-18	\$264,930.93
216	30-Jun-18	\$264,930.98
217	31-Jul-18	\$264,930.98
218	31-Aug-18	\$264,930.98
219	30-Sep-18	\$264,930.98
220	31-Oct-18	\$264,930.98
221	30-Nov-18	\$264,930.98
222	31-Dec-18	\$264,930.98
223	31-Jan-19	\$264,930.98
224	28-Feb-19	\$264,930.98
225	31-Mar-19	\$264,930.98
226	30-Apr-19	\$264,930.98
227	31-May-19	\$264,930.98
228	30-Jun-19	\$264,930.98
229	31-Jul-19	\$264,930.98
230	31-Aug-19	\$264,930.98
231	30-Sep-19	\$264,930.98
232	31-Oct-19	\$264,930.98
233	30-Nov-19	\$264,930.98
234	31-Dec-19	\$264,930.98
235	31-Jan-20	\$264,930.98
236	29-Feb-20	\$264,930.98
237	31-Mar-20	\$264,930.98
238	30-Apr-20	\$264,930.98
239	31-May-20	\$264,930.98

### 3.01- Base Rent Schedule

Rent is due on the last business day of the month.

Period	Month End Date	Indianola Rent Schedule
240	30-Jun-20	\$264,930.98
241	31-Jul-20	\$264,930.98
242	31-Aug-20	\$264,930.98
243	30-Sep-20	\$264,930.98
244	31-Oct-20	\$264,930.98
245	30-Nov-20	\$264,930.98
246	31-Dec-20	\$264,930.98
247	31-Jan-21	\$264,930.98
248	28-Feb-21	\$264,930.98
249	31-Mar-21	\$264,930.98
250	30-Apr-21	\$264,930.98
251	31-May-21	\$264,930.98
252	30-Jun-21	\$264,930.98
253	31-Jul-21	\$264,930.98
254	31-Aug-21	\$264,930.98
255	30-Sep-21	\$264,930.98
256	31-Oct-21	\$264,930.98
257	30-Nov-21	\$264,930.98
258	31-Dec-21	\$264,930.98
259	31-Jan-22	\$264,930.98
260	28-Feb-22	\$264,930.98
261	31-Mar-22	\$264,930.98
262	30-Apr-22	\$264,930.98
263	31-May-22	\$264,930.98
264	30-Jun-22	\$264,930.98

**Schedule 8.05(d)**

**Indianola, MS Property:**

- (i) Either (a) (x) complete, to the reasonable satisfaction of the Lessor, installation of secondary containment structures over the waste oil and diesel fuel aboveground storage tanks at the truck repair shop at the Premises and (y) install appropriate covering over all outdoor aboveground storage tanks and associated secondary containment areas at the truck repair shop; or (b) move such tanks to inside the truck repair shop.
- (ii) Clean to the reasonable satisfaction of the Lessor any and all oil stains on the truck repair shop concrete floor.



**Schedule 8.05(e)**

**Indianola, MS Property:**

(i) Repair and seal to the reasonable satisfaction of the Lessor all expansion joints at the warehouse areas to a state of good working order; repair and seal to the reasonable satisfaction of the Lessor all cracks and other deficiencies in the exterior joints located at the front office area; and repair and seal to the reasonable satisfaction of the Lessor all expansion joints in the building and at the office area exteriors to a state of good working order.

(ii) Repair to the reasonable satisfaction of the Lessor the puncture in the roof membrane near the mechanical equipment; obtain a manufacturer's roof warranty; and conduct periodic cleaning of the roof drain perimeters for the purpose of removing debris for proper drainage.

(iii) Repair to the reasonable satisfaction of the Lessor evidence of leakage in fire sprinkler systems valving and piping.

## Schedule 9.01(a)

### Insurance Coverage

- |                              |   |
|------------------------------|---|
| Property                     | <ul style="list-style-type: none"><li>o All risk, extended coverage.</li><li>o Ordinance or law coverage and boiler and machinery, if applicable.</li><li>o Replacement cost basis, with an agreed value equal to full insurable replacement value of the Improvements, Fixtures and Equipment.</li><li>o Agent named as loss payee.</li><li>o Lessor may require, based on reasonable good faith opinion, on annual basis that Lessee increase amount. Lessee pays costs of any appraisal for Lessor's determination.</li></ul>  |
| Commercial General Liability | <ul style="list-style-type: none"><li>o Coverage of all claims arising out of Lessee's or any third party's use and occupancy of Property (including any sublease) and which are customarily covered under standard CGL policy.</li><li>o Combined single limit of \$1,000,000.00 per occurrence; aggregate limit of \$10,000,000.00; excess umbrella liability insurance of at least \$20,000,000.00; aggregate limit per location of \$20,000,000.00.</li><li>o Lessor may require, based on reasonable good faith opinion, on annual basis that Lessee increase amount.</li><li>o Limits on amounts shall not limit liability of Lessee under the Lease.</li></ul> |
| Workers' Compensation        | <ul style="list-style-type: none"><li>o As per applicable statute.</li></ul>  |
| Employers' Liability         | <ul style="list-style-type: none"><li>o Limit per employee of at least \$100,000.00; \$500,000.00 per occurrence.</li></ul>   |
| Builder's Risk               | <ul style="list-style-type: none"><li>o All risk, extended coverage for any period of construction at the Property if not otherwise insured by property insurance policy.</li><li>o For value of alterations and/or additions.</li></ul>  |
| Flood                        | <ul style="list-style-type: none"><li>o If Property is in special flood hazard zone, in highest amount available.</li><li>o If Property is not in special flood hazard zone, in amount of at least \$250,000.00.</li><li>o Notwithstanding the above, Lessee shall comply with Section 9.01 (f) of Lease.</li></ul>   |
| Earthquake                   | <ul style="list-style-type: none"><li>o If Property is in earthquake zone, in amount greater of (x) amount sufficient to prevent Lessor and Lessee from becoming coinsurers of any loss or (y) 100% of replacement value; deductible must be reasonable acceptable to Lessor; replacement cost endorsement to be included.</li><li>o If Property is not in earthquake zone, in amount of \$250,000.00.</li></ul>  |
| Other Insurance              | <ul style="list-style-type: none"><li>o Lessor may, from time, reasonably require other insurance so long as such other insurance is customarily required</li></ul>   |

to be carried on similar properties in the industry and similar geographic region.

Insurance Companies

- o Any insurance shall be provided by one or more insurers (x) with a claims paying rating of at least A by S&P or the equivalent rating by Moody's and (y) a general policy rating of at least A and financial class of at least XI by AM. Best Company, Inc. If an insurer shall fail to meet such requirements, Lessee shall have 60 days to replace such insurer with an insurer meeting the above requirements.

## Endorsements

- o Lessor, Agent, Holders and Head Lessor named as additional insureds under liability policies required under the Lease.
- o Each policy shall be primary without right of contribution.
- o Insurer shall waive all rights of subrogation against Lessor, Agent. Holders and Head Lessor, unless such parties have caused the loss/liability by gross negligence or willful misconduct.
- o With respect to additional insureds and additional loss payees, a policy shall operate and be so construed as if a separate policy.
- o Insurer, upon cancellation or non-renewal, must give 30 day written notice to Lessor, Agent, Holders and Head Lessor.
- o Lessor, Agent, Holders and Head Lessor shall not be liable for any premiums or assessments.
- o No act or omission, whether or not negligent, of Lessee or any indemnitee shall affect enforceability or validity of any policy with any other Indemnitee.

## Adjustment

- o So long as no Lease Event of Default shall exist. Lessee shall, at Lessee's own cost and expense, adjust all losses.

## Self-Insurance

- o Deductible is \$500,000.00 for Property and \$1,000,000.00 for Commercial General Liability.
- o So long as requirements for self insurance are satisfied, there will be no limit on amounts of self insurance.

**Schedule 12.01 - Termination Values**

Note: Termination Value equals Termination Value % times the Purchase Price of the Real Estate and the Equipment, which totaled \$41,903,053.

Period	Month End Date	Indianola Lease Termination Value (%)	Indianola Lease Termination Value (Dollar Value)
Interim	30-Jun-00	104.000%	\$43,579,175.12
1	31-Jul-00	104.000%	\$43,579,175.12
2	31-Aug-00	103.814%	\$43,501,235.45
3	30-Sep-00	103.628%	\$43,423,295.77
4	31-Oct-00	103.442%	\$43,345,356.09
5	30-Nov-00	103.255%	\$43,266,997.38
6	31-Dec-00	103.069%	\$43,189,057.70
7	31-Jan-01	102.883%	\$43,111,118.02
8	28-Feb-01	102.696%	\$43,032,759.31
9	31-Mar-01	102.510%	\$42,954,819.64
10	30-Apr-01	102.324%	\$42,876,879.96
11	31-Mar-01	102.137%	\$42,798,521.25
12	30-Jun-01	101.951%	\$42,720,581.57
13	31-Jul-01	101.765%	\$42,642,641.89
14	31-Aug-01	101.578%	\$42,564,283.18
15	30-Sep-01	101.392%	\$42,486,343.50
16	31-Oct-01	101.206%	\$42,408,403.82
17	30-Nov-01	101.020%	\$42,330,464.15
18	31-Dec-01	100.833%	\$42,252,105.44
19	31-Jan-02	100.647%	\$42,174,165.76
20	28-Feb-02	100.461%	\$42,096,226.08
21	31-Mar-02	100.274%	\$42,017,867.37
22	30-Apr-02	100.088%	\$41,939,927.69
23	31-May-02	99.902%	\$41,861,988.01
24	30-Jun-02	99.715%	\$41,783,629.30
25	31-Jul-02	99.529%	\$41,705,689.63
26	31-Aug-02	99.343%	\$41,627,749.95
27	30-Sep-02	99.156%	\$41,549,391.24
28	31-Oct-02	98.970%	\$41,471,451.56
29	30-Nov-02	98.784%	\$41,393,511.88
30	31-Dec-02	98.597%	\$41,315,153.17
31	31-Jan-03	98.411%	\$41,237,213.49
32	28-Feb-03	98.225%	\$41,159,273.81
33	31-Mar-03	98.039%	\$41,081,334.14
34	30-Apr-03	97.852%	\$41,002,975.43
35	31-May-03	97.666%	\$40,925,035.75
36	30-Jun-03	97.480%	\$40,847,096.07
37	31-Jul-03	97.293%	\$40,768,737.36

## Schedule 12.01 - Termination Values

Note: Termination Value equals Termination Value % times the Purchase Price of the Real Estate and the Equipment, which totaled \$41,903,053.

Period	Month End Date	Indianola Lease Termination Value (%)	Indianola Lease Termination Value (Dollar Value)
38	31-Aug-03	97.107%	\$40,690,797.68
39	30-Sep-03	96.921%	\$40,612,858.00
40	31-Oct-03	96.734%	\$40,534,499.29
41	30-Nov-03	96.548%	\$40,456,559.62
42	31-Dec-03	96.362%	\$40,378,619.94
43	31-Jan-04	96.175%	\$40,300,261.23
44	29-Feb-04	95.989%	\$40,222,321.55
45	31-Mar-04	95.803%	\$40,144,381.87
46	30-Apr-04	95.616%	\$40,066,023.16
47	31-May-04	95.430%	\$39,988,083.48
48	30-Jun-04	95.244%	\$39,910,143.80
49	31-Jul-04	95.058%	\$39,832,204.13
50	31-Aug-04	94.871%	\$39,753,845.42
51	30-Sep-04	94.685%	\$39,675,905.74
52	31-Oct-04	94.499%	\$39,597,966.06
53	30-Nov-04	94.312%	\$39,519,607.35
54	31-Dec-04	94.126%	\$39,441,667.67
55	31-Jan-05	93.940%	\$39,363,727.99
56	28-Feb-05	93.753%	\$39,285,369.28
57	31-Mar-05	93.567%	\$39,207,429.61
58	30-Apr-05	93.381%	\$39,129,489.93
59	31-May-05	93.194%	\$39,051,131.22
60	30-Jun-05	93.008%	\$38,973,191.54
61	31-Jul-05	92.822%	\$38,895,251.86
62	31-Aug-05	92.635%	\$38,816,893.15
63	30-Sep-05	92.449%	\$38,738,953.47
64	31-Oct-05	92.263%	\$38,661,013.79
65	30-Nov-05	92.077%	\$38,583,074.12
66	31-Dec-05	91.890%	\$38,504,715.41
67	31-Jan-06	91.704%	\$38,426,775.73
68	28-Feb-06	91.518%	\$38,348,836.05
69	31-Mar-06	91.331%	\$38,270,477.34
70	30-Apr-06	91.145%	\$38,192,537.66
71	31-May-06	90.959%	\$38,114,597.98
72	30-Jun-06	90.772%	\$38,036,239.27
73	31-Jul-06	90.586%	\$37,958,299.60
74	31-Aug-06	90.400%	\$37,880,359.92
75	30-Sep-06	90.213%	\$37,802,001.21

## Schedule 12.01 - Termination Values

Note: Termination Value equals Termination Value % times the Purchase Price of the Real Estate and the Equipment, which totaled \$41,903,053.

Period	Month End Date	Indianola Lease Termination Value (%)	Indianola Lease Termination Value (Dollar Value)
76	31-Oct-06	90.027%	\$37,724,061.53
77	30-Nov-06	89.841%	\$37,646,121.85
78	31-Dec-06	89.654%	\$37,567,763.14
79	31-Jan-07	89.468%	\$37,489,823.46
80	28-Feb-07	89.282%	\$37,411,883.78
81	31-Mar-07	89.096%	\$37,333,944.11
82	30-Apr-07	88.909%	\$37,255,585.40
83	31-May-07	88.723%	\$37,177,645.72
84	30-Jun-07	88.537%	\$37,099,706.04
85	31-Jul-07	88.350%	\$37,021,347.33
86	31-Aug-07	88.164%	\$36,943,407.65
87	30-Sep-07	87.978%	\$36,865,467.97
88	31-Oct-07	87.791%	\$36,787,109.26
89	30-Nov-07	87.605%	\$36,709,169.59
90	31-Dec-07	87.419%	\$36,631,229.91
91	31-Jan-08	87.232%	\$36,552,871.20
92	29-Feb-08	87.046%	\$36,474,931.52
93	31-Mar-08	86.860%	\$36,396,991.84
94	30-Apr-08	86.674%	\$36,319,052.16
100	31-Oct-08	85.556%	\$35,850,576.03
101	30-Nov-08	85.369%	\$35,772,217.32
102	31-Dec-08	85.183%	\$35,694,277.64
103	31-Jan-09	84.997%	\$35,616,337.96
104	28-Feb-09	84.810%	\$35,537,979.25
105	31-Mar-09	84.624%	\$35,460,039.58
106	30-Apr-09	84.438%	\$35,382,099.90
107	31-May-09	84.251%	\$35,303,741.19
108	30-Jun-09	84.065%	\$35,225,801.51
109	31-Jul-09	83.879%	\$35,147,861.83
110	31-Aug-09	83.693%	\$35,069,922.15
111	30-Sep-09	83.506%	\$34,991,563.44
112	31-Oct-09	83.320%	\$34,913,623.76
113	30-Nov-09	83.134%	\$34,835,684.09

**Schedule 12.01 - Termination Values**

Note: Termination Value equals Termination Value % times the Purchase Price of the Real Estate and the Equipment, which totaled \$41,903,053.

Period	Month End Date	Indianola Lease Termination Value (%)	Indianola Lease Termination Value (Dollar Value)
114	31-Dec-09	82.947%	\$34,757,325.38
115	31-Jan-10	82.761%	\$34,679,385.70
116	28-Feb-10	82.575%	\$34,601,446.02
117	31-Mar-10	82.388%	\$34,523,087.31
118	30-Apr-10	82.202%	\$34,445,147.63
119	31-Mar-10	82.016%	\$34,367,207.95
120	30-Jun-10	81.829%	\$34,288,849.24
121	31-Jul-10	81.643%	\$34,210,909.57
122	31-Aug-10	81.457%	\$34,132,969.89
123	30-Sep-10	81.270%	\$34,054,611.18
124	31-Oct-10	81.084%	\$33,976,671.50
125	30-Nov-10	80.898%	\$33,898,731.82
126	31-Dec-10	80.712%	\$33,820,792.14
127	31-Jan-11	80.525%	\$33,742,433.43
128	28-Feb-11	80.339%	\$33,664,493.75
129	31-Mar-11	80.153%	\$33,586,554.08
130	30-Apr-11	79.966%	\$33,508,195.37
131	31-May-11	79.780%	\$33,430,255.69
132	30-Jun-11	79.594%	\$33,352,316.01
133	31-Jul-11	79.407%	\$33,273,957.30
134	31-Aug-11	79.221%	\$33,196,017.62
135	30-Sep-11	79.035%	\$33,118,077.94
136	31-Oct-11	78.848%	\$33,039,719.23
137	30-Nov-11	78.662%	\$32,961,779.56
138	31-Dec-11	78.476%	\$32,883,839.88
139	31-Jan-12	78.289%	\$32,805,481.17
140	29-Feb-12	78.103%	\$32,727,541.49
141	31-Mar-12	77.917%	\$32,649,601.81
142	30-Apr-12	77.731%	\$32,571,662.13
143	31-May-12	77.544%	\$32,493,303.42
144	30-Jun-12	77.358%	\$32,415,363.74
145	31-Jul-12	77.172%	\$32,337,424.07
146	31-Aug-12	76.985%	\$32,259,065.36
147	30-Sep-12	76.799%	\$32,181,125.68
148	31-Oct-12	76.613%	\$32,103,186.00
149	30-Nov-12	76.426%	\$32,024,827.29
150	31-Dec-12	76.240%	\$31,946,887.61
151	31-Jan-13	76.054%	\$31,868,947.93



**Schedule 12.01 - Termination Values**

Note: Termination Value equals Termination Value % times the Purchase Price of the Real Estate and the Equipment, which totaled \$41,903,053.

Period	Month End Date	Indianola Lease Termination Value (%)	Indianola Lease Termination Value (Dollar Value)
152	28-Feb-13	75.867%	\$31,790,589.22
153	31-Mar-13	75.681%	\$31,712,649.55
154	30-Apr-13	75.495%	\$31,634,709.87
155	31-May-13	75.308%	\$31,556,351.16
156	30-Jun-13	75.122%	\$31,478,411.48
157	31-Jul-13	74.936%	\$31,400,471.80
158	31-Aug-13	74.750%	\$31,322,532.12
159	30-Sep-13	74.563%	\$31,244,173.41
160	31-Oct-13	74.377%	\$31,166,233.73
161	30-Nov-13	74.191%	\$31,088,294.06
162	31-Dec-13	74.004%	\$31,009,935.35
163	31-Jan-14	73.818%	\$30,931,995.67
164	28-Feb-14	73.632%	\$30,854,055.99
165	31-Mar-14	73.445%	\$30,775,697.28
166	30-Apr-14	73.259%	\$30,697,757.60
167	31-May-14	73.073%	\$30,619,817.92
168	30-Jun-14	72.886%	\$30,541,459.21
169	31-Jul-14	72.700%	\$30,463,519.54
170	31-Aug-14	72.514%	\$30,385,579.86
171	30-Sep-14	72.327%	\$30,307,221.15
172	31-Oct-14	72.141%	\$30,229,281.47
173	30-Nov-14	71.955%	\$30,151,341.79
174	31-Dec-14	71.769%	\$30,073,402.11
175	31-Jan-14	71.582%	\$29,995,043.40
176	28-Feb-15	71.396%	\$29,917,103.72
177	31-Mar-15	71.210%	\$29,839,164.05
178	30-Apr-15	71.023%	\$29,760,805.34
179	31-May-15	70.837%	\$29,682,865.66
180	30-Jun-15	70.651%	\$29,604,925.98
181	31-Jul-15	70.464%	\$29,526,567.27
182	31-Aug-15	70.278%	\$29,448,627.59
183	30-Sep-15	70.092%	\$29,370,687.91
184	31-Oct-15	69.905%	\$29,292,329.20
185	30-Nov-15	69.719%	\$29,214,389.53
186	31-Dec-15	69.533%	\$29,136,985
187	31-Jan-16	69.347%	\$29,058,510.17
188	29-Feb-16	69.160%	\$28,980,151.46
189	31-Mar-16	68.974%	\$28,902,211.78

**Schedule 12.01 - Termination Values**

Note: Termination Value equals Termination Value % times the Purchase Price of the Real Estate and the Equipment, which totaled \$41,903,053.

Period	Month End Date	Indianola Lease Termination Value (%)	Indianola Lease Termination Value (Dollar Value)
190	30-Apr-16	68.788%	\$28,824,272.10
191	31-May-16	68.601%	\$28,745,913.39
192	30-Jun-16	68.415%	\$28,667,973.71
193	31-Jul-16	68.229%	\$28,590,034.04
194	31-Aug-16	68.042%	\$28,511,675.33
195	30-Sep-16	67.856%	\$28,433,735.65
196	31-Oct-16	67.670%	\$28,355,795.97
197	30-Nov-16	67.483%	\$28,277,437.26
198	31-Dec-16	67.297%	\$28,199,497.58
199	31-Jan-17	67.111%	\$28,121,557.90
200	28-Feb-17	66.924%	\$28,043,199.19
201	31-Mar-17	66.738%	\$27,965,259.52
202	30-Apr-17	66.552%	\$27,887,319.84
203	31-May-17	66.366%	\$27,809,380.16
204	30-Jun-17	66.179%	\$27,731,021.45
205	31-Jul-17	65.993%	\$27,653,081.77
206	31-Aug-17	65.807%	\$27,575,142.09
207	30-Sep-17	65.620%	\$27,496,783.38
208	31-Oct-17	65.434%	\$27,418,843.71
209	30-Nov-17	65.248%	\$27,340,904.03
210	31-Dec-17	65.061%	\$27,262,545.32
211	31-Jan-17	64.875%	\$27,184,605.64
212	28-Feb-18	64.689%	\$27,106,665.96
213	31-Mar-18	64.502%	\$27,028,307.25
214	30-Apr-18	64.316%	\$26,950,367.57
215	31-May-18	64.130%	\$26,872,427.89
216	30-Jun-18	63.943%	\$26,794,069.18
217	31-Jul-18	63.757%	\$26,716,129.51
218	31-Aug-18	63.571%	\$26,638,189.83
219	30-Sep-18	63.385%	\$26,560,250.15
220	31-Oct-18	63.198%	\$26,481,891.44
221	30-Nov-18	63.012%	\$26,403,951.76
222	31-Dec-18	62.826%	\$26,326,012.08
223	31-Jan-19	62.639%	\$26,247,653.37
224	28-Feb-19	62.453%	\$26,169,713.70
225	31-Mar-19	62.267%	\$26,091,774.02
226	30-Apr-19	62.080%	\$26,013,415.31
227	31-Mar-19	61.894%	\$25,935,475.63

**Schedule 12.01 - Termination Values**

Note: Termination Value equals Termination Value % times the Purchase Price of the Real Estate and the Equipment, which totaled \$41,903,053.

Period	Month End Date	Indianola Lease Termination Value (%)	Indianola Lease Termination Value (Dollar Value)
228	30-Jun-19	61.708%	\$25,857,535.95
229	31-Jul-19	61.521%	\$25,779,177.24
230	31-Aug-19	61.335%	\$25,701,237.56
231	30-Sep-19	61.149%	\$25,623,297.88
232	31-Oct-19	60.962%	\$25,544,939.17
233	30-Nov-19	60.776%	\$25,466,999.50
234	31-Dec-19	60.590%	\$25,389,059.82
235	31-Jan-20	60.404%	\$25,311,120.14
236	29-Feb-20	60.217%	\$25,232,761.43
237	31-Mar-20	60.031%	\$25,154,821.75
238	30-Apr-20	59.845%	\$25,076,882.07
239	31-May-20	59.658%	\$24,998,521.36
240	30-Jun-20	59.472%	\$24,920,583.69
241	31-Jul-20	59.286%	\$24,842,644.01
242	31-Aug-20	59.099%	\$24,764,285.30
243	30-Sep-20	58.913%	\$24,686,345.62
244	31-Oct-20	58.727%	\$24,608,405.94
245	30-Nov-20	58.540%	\$24,530,047.23
246	31-Dec-20	58.354%	\$24,452,107.55
247	31-Jan-21	58.168%	\$24,374,167.87
248	28-Feb-21	57.981%	\$24,295,809.16
249	31-Mar-21	57.795%	\$24,217,869.49
250	30-Apr-21	57.609%	\$24,139,929.81
251	31-May-21	57.423%	\$24,061,990.13
252	30-Jun-21	57.236%	\$23,983,631.42
253	31-Jul-21	57.050%	\$23,905,691.74
254	31-Aug-21	56.864%	\$23,827,752.06
255	30-Sep-21	56.677%	\$23,749,393.35
256	31-Oct-21	56.491%	\$23,671,453.68
257	30-Nov-21	56.305%	\$23,593,514.00
258	31-Dec-21	56.118%	\$23,515,155.29
259	31-Jan-22	55.932%	\$23,437,215.61
260	28-Feb-22	55.746%	\$23,359,275.93
261	31-Mar-22	55.559%	\$23,280,917.22
262	30-Apr-22	55.373%	\$23,202,977.54
263	31-May-22	55.187%	\$23,125,037.86
264	30-Jun-22	55.000%	\$23,046,679.15

**Indianola, MS Property:**

(i) Aboveground Storage Tanks: Pursuant to ss. 8.05(d) herein, Lessee shall either (a)(x) complete, to the reasonable satisfaction of the Lessor, installation of secondary containment structures over the waste oil and diesel fuel aboveground storage tanks at the truck repair shop at the Premises and (y) install appropriate covering over all outdoor aboveground storage tanks and associated secondary containment areas at the truck repair shop; or (b) move such tanks to inside the truck repair shop.

(ii) Oil Stains: Pursuant to ss.8.05(d) herein. Lessee shall clean to the reasonable satisfaction of the Lessor any and all oil stains on the truck repair shop concrete floor;

### **Schedule 20.01(m) Patent or Trademark Claims**

1. Jean Charles, Inc. - Notice of infringement dated April 26,2000 of U.S. patent-
2. Letnelson Medical, Education & Research Foundation, L.P. - Notice of infringement dated February 16, 1999 of various U.S. patents.
3. Roman, Inc. - Notice of copyright infringement dated May 14, 1999.
4. Quality Artworks - Notice of copyright infringement dated October 18, 1999. The vendor has assumed all responsibility for this claim of infringement.
5. Hallmark Cards, Inc. - Notice of copyright infringement dated November 5, 1999. The vendor has assumed all responsibility for this claim of infringement.

**Schedule 20.01 (r)**

Lease Agreement  
Material Adverse Litigation

None.

**EXHIBIT A  
TO  
LEASE AGREEMENT**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (as this agreement may be amended, supplemented or otherwise modified from time to time with the terms hereof, this "Agreement") dated as of [ ], 2000, between DOLLAR GENERAL CORPORATION, a corporation organized under the laws of Tennessee ("Transferor"), and [ ], a [ ] organized under the laws of [ ] ("Transferee").

**WITNESSETH:**

WHEREAS, the parties hereto desire to effect (a) the transfer by Transferor to Transferee of the right, title and interest of the Transferor in, under and with respect to that certain Lease Agreement dated as of June 1, 2000 (the "Lease") between Transferor, as Lessee, and FU/DG Fulton, LLC, a Delaware limited liability company, as Lessor, and the proceeds therefrom and (b) the assumption by Transferee of the obligations of Transferor accruing thereunder;

NOW, THEREFORE, it is hereby agreed as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Lease and Appendix A thereto, and the rules of usage set forth therein shall apply hereto.
2. Assignment. Transferor does hereby sell, convey, assign, transfer and set over unto Transferee, as of the date hereof, its right, title and interest in the Lease and any proceeds therefrom, together with all other documents and instruments evidencing such right, title and interest.
3. Assumption. Transferee hereby undertakes, for the benefit of Transferor and its successors and assigns, all of the duties and obligations of Transferor whenever accrued (other than duties and obligations of Transferor required to be performed by it on or prior to the date hereof under the Lease) pursuant to the Lease, and hereby confirms that it shall be deemed a party to the Lease.
4. Obligations of Transferor. Transferor shall not be released from its primary liability as Lessee under the Lease and shall continue to be obligated for all obligations of "Lessee" under the Lease, which obligations shall continue in full force and effect as obligations of a principal and not of a guarantor or surety, as though no assignment had been made and notwithstanding the rejection of the Lease by the Transferee or its successor or assign pursuant to Section 365 of Title 11 of the United States Code, any provision of the Bankruptcy Code, or any similar law relating to bankruptcy, insolvency, reorganization or the rights of creditors.

5. Payments. Transferor hereby covenants and agrees to pay over to Transferee, if and when received following the date hereof, any amounts (including any sums payable as interest in respect thereof) paid to or for the benefit of Transferor that, under Section 2 hereof, belong to Transferee, and Transferee hereby covenants and agrees to pay over to Transferor, if and when received following the date hereof, any amounts (including any sums payable as interest in respect thereof) paid to or for the benefit of Transferee that, under Section 2 hereof, belong to Transferor.

6. Representations and Warranties of Transferee. Transferee represents and warrants to each party to the Lease that:

(a) it has all requisite power and authority and legal right to enter and carry out the transactions contemplated hereby and to carry out and perform the obligations of the Transferor pursuant to the Lease as assumed by the Transferee pursuant hereto;

(b) except for modifications required due to the identity of the Transferee, which modifications are set forth on Schedule 1 hereto, on and as of the date hereof, the representations and warranties of the Transferor set forth in Section 20.01 of the Lease if made by the Transferee are true and correct as to the Transferee;

(c) it is not a tax-exempt entity (within the meaning of Section 168(h) of the Code); and

(d) it is not a debtor or debtor-in-possession in a voluntary or involuntary bankruptcy proceeding as of the date of this Agreement.

(e) it is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation. Transferee has the corporate power and authority to conduct its business as now conducted, to own or hold under lease its property, and Transferee further has the authority to receive the interests of the Transferor under this Agreement. Transferee is duly qualified to do business and is in good standing as a foreign corporation in the jurisdiction in which the Property is located, and it is in good standing as a foreign corporation in each jurisdiction where the failure to so qualify would have a material adverse effect on its ability to perform its obligations under this Agreement.

(f) it has been duly authorized by all necessary corporate action to enter into this Agreement and this Agreement has been duly executed and delivered by Transferee and the execution, delivery and performance thereof by Transferee will not, (i) require any approval of the stockholders of Transferee or any approval or consent of any trustee or holder of any indebtedness or obligation of Transferee, other than such consents and approvals as have been obtained, (ii) contravene any Applicable Law binding on such Transferee or (iii) contravene or result in any breach of or constitute any default under Transferee's charter or by-law's or other organizational documents, or any indenture, judgment, order, mortgage, loan agreement, contract, partnership or joint venture agreement, lease or other agreement or instrument to which Transferee is a party or by



which Transferee is bound, or result in the creation of any Lien (other than pursuant to the Lease) upon any of the property of Transferee.

(g) all Governmental Action and other consents, approvals, waivers, registrations, authorizations and other action required or necessary pursuant to any legal requirement or contract, indenture, instrument or agreement to which Transferee is a party or its property is bound in connection with the execution, delivery and performance by Transferee of this Agreement, has been obtained, given or made.

(h) this Agreement constitutes the legal, valid and binding obligation of Transferee, enforceable against Transferee in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, moratorium, fraudulent conveyance, insolvency, equitable principles or other similar laws affecting the enforcement of creditors' rights in general.

(i) Transferee has not offered any interest in the Property or this Agreement, or any securities of Transferee to, or solicited any offer to acquire any of the same from, any Person, in violation of Section 5 of the Securities Act, nor has it authorized any Person to take any such action, and Transferee has taken no action that would subject any interest in the Property, the Bond, or this Agreement to the registration requirements of Section 5 of the Securities Act. Nothing herein is intended to imply or shall be construed to suggest that the interests in this Agreement constitute securities.

7. Default. Each of Transferor and Transferee represents and warrants for the benefit of the Participants that no Lease Default or Lease Event of Default exists and that the transfer contemplated hereby complies with the provisions of Article XI of the Lease.

8. Reliance. The representations, warranties, covenants and agreements of the Transferee are made for the benefit of, and may be relied upon by the parties to the Lease.

9. Successors and Assigns. This Agreement shall be binding upon the Transferor and its successors and assigns and shall be binding upon and inure to the benefit of the Transferee and its successors and assigns.

10. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State in which the Property is situated.

**EACH PARTY HERETO SUBMITS TO NON-EXCLUSIVE PERSONAL JURISDICTION IN THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF NEW YORK (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF SUCH PERSON'S OBLIGATIONS HEREUNDER AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE OBLIGATIONS OWING TO ANY PERSON HEREUNDER. EACH PARTY HERETO HEREBY WAIVES AND AGREES NOT**

TO ASSERT AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT (A) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE IN THOSE COURTS OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (B) THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR (C) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER. EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATED TO THE ENFORCEMENT OF THIS AGREEMENT.

**THE PARAGRAPH SET FORTH ABOVE SHALL APPLY TO ANY SIGNATORY HERETO AND THE SUCCESSORS AND ASSIGNS OF ANY PARTY OR SIGNATORY HERETO.**

11. Reliance. Each Participant shall be entitled to rely on this Agreement and shall be a third party beneficiary hereof.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**DOLLAR GENERAL CORPORATION,  
as Transferor**

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

[Transferee]

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

## Exhibit B

### Lease Agreement

#### Mississippi Real Property

Land in Sunflower County Mississippi, some of which is located within the corporate limits of the City of Indianola, Mississippi, being more particularly described according to the survey of G. Wayne Gardner, dated February 10, 2000, as follows:

240.00 acres, more or less, located in the Southwest Quarter (SW 1/4) of

Section 25, Northwest Quarter (NW 1/4) of Section 36, Southeast Quarter (SE 1/4) of Section 26 and Northeast Quarter (NE 1/4) of Section 35, all in Township 19 North, Range 5 West, Sunflower County, Mississippi and being further described as follows:

Commence at the Southwest corner of Section 26, Township 19 North, Range 5 West, Sunflower County, Mississippi; thence North 89(degree) 42' 40" East 2412.65 feet to a railroad iron; thence North 01(degree) 46' 00" East 2321.41 feet to a point; thence South 56(degree) 25' 00" East 1821.32 feet to a point; thence North 88(degree) 50' 41" East 245.66 feet to a 1/2" rebar on the South right-of-way line of Beaver Dam Road and said point being the POINT OF BEGINNING of the parcel herein described; thence South 00(degree) 04' 59" West 631.62 feet to a 1/2" rebar on the North right-of-way line of U.S. Highway 82; thence along the North right-of-way line of U.S. Highway 82 the next two calls - North

72(degree) 32' 38" East 2193.34 feet to a 1/2" rebar; thence along a curve to the right having a radius of 8628.22 feet, a chord bearing of North 75(degree) 10' 42" East and a chord distance of 793.18 feet, for an arc distance of 793.46 feet to a 1" iron pipe; thence North 5(degree) 11' 43" West 270.00 feet to a 1/2" rebar; thence North 75(degree) 54' 38" East 170.25 feet to a 1/2" rebar; thence North 03(degree) 16' 00" West 648.18 feet to a 1/2" rebar; thence North 04(degree) 43' 32" West 895.60 feet to a 1/2" rebar; thence North 04(degree) 36' 12" West 750.19 feet to a 1/2" rebar on the South right-of-way line of Beaver Dam Road; thence North 89(degree) 43' 03" West 2255.17 feet along the South right-of-way line of Beaver Dam Road to a 1/2" rebar; thence along a curve to the left having a radius of 5689.58 feet, a chord bearing of South 89(degree) 30' 15" West and chord distance of 154.56 feet, for an arc distance of 154.57 feet to a 1/2" rebar; thence South 88(degree) 43' 34" West 18.53 feet along the South right-of-way line of Beaver Dam Road to a 1/2" rebar; thence South 88(degree) 50' 41" West 962.13 feet along said South right-of-way line of Beaver Dam Road to a 1/2" rebar and the POINT OF BEGINNING.

Being the part of the property conveyed to Atlantic Financial Group, Ltd., a Texas limited partnership, by deed from Sunflower County Economic Development. District as recorded in Book S-33 at page 475 in the office of the Chancery Clerk of Sunflower County, Mississippi.

## EXHIBIT C

### FORM OF ESTOPPEL CERTIFICATE

The undersigned, DOLLAR GENERAL CORPORATION ("Lessee"), a Tennessee corporation, is the Lessee under that certain Lease Agreement (the "Lease") dated June 1, 2000 between the Lessee and FU/DG INDIANOLA, LLC, a Delaware limited liability company, as the Lessor (the "Lessor") of certain real property located in Sunflower County, Mississippi as described on attached Schedule 1 (the "Description of Property"). With the understanding that the Parties listed on Schedule 2 hereto will be and are entitled to rely upon the covenant, representations and statements made herein, Lessee hereby covenants, represents and warrants as follows (terms used herein which are not otherwise defined herein shall have the meaning ascribed to them in the Lease and Appendix A thereto):

- I. The Property, which is the subject of the Lease, is described in Schedule 1 hereto.
2. The Lessee is the owner and holder of all rights, title and interest in the leasehold estate created by the Lease and has no actual knowledge of any Liens thereon other than Permitted Liens.
3. The Lessor does not have any unsatisfied obligations to the Lessee arising under the Lease and, to Lessee's knowledge, no breach on the part of the Lessor exists thereunder. No defense or right of termination, offset, abatement or counterclaim exists with respect to any Rents or other sums payable or to become payable by the Lessee under the Lease.
4. All material permits and a certificate of occupancy, if any, required for the operation of the Property by the Lessee have been obtained, and the Property may be used for the purposes contemplated by the Lease.
5. Attached hereto is a true and correct copy of the Lease and all amendments, if any, thereto: [If no amendments, state "No Amendments".] The Lease is in full force and effect in accordance with such terms and has not been modified, supplemented, canceled or amended in any respect except as stated above.
6. The term of the Lease commenced on \_\_\_\_\_, \_\_\_\_\_, and continues through \_\_\_\_\_ unless extended as provided in the Lease. Lessee has commenced paying Rent without offset or abatement. The Lessee is obligated to pay Base Rent in such installments and amounts as set forth in Schedule 3.01 to the Lease, which obligation is continuing and is not past due or delinquent in any respect. No installment of Base Rent has been or will be prepaid more than thirty (30) days before it comes due.

7. The Property comprises a warehouse and distribution facility with office space and a truck maintenance facility ancillary thereto or other use consistent with Section 8.01 of the Lease.

8. No event exists which constitutes a Lease Default to Lease Event of Default by the Lessee.

9. The execution and delivery of this Certificate shall in no way expand the rights or obligations of the Lessor and Lessee arising under the Lease.

10. There are no occupants of the Property other than Lessee and the permitted sublessees or users pursuant to the Lease set forth on Schedule 3 hereto. Except as otherwise described on Schedule 3, Lessee has not assigned its rights under the Lease.

11. Such other matters as may be reasonably requested by Lessor, the Agent, any Holder or the Head Lessor.

12. This Certificate shall inure to the benefit of and be binding upon the parties set forth in Schedule 2, and their respective successors and assigns, and to no other person or entities.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered by the undersigned as of June 1, 2000.

**LESSEE:**

**DOLLAR GENERAL CORPORATION**  
a Tennessee corporation

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**Schedule 1**

**Description of Property**

**Schedule 2**

**Parties Entitled to Rely**



**Schedule 3**

**Users Pursuant to the Lease**

**EXHIBIT D**  
**REAFFIRMATION AGREEMENT**

THIS REAFFIRMATION AGREEMENT dated as of [date] (this "Reaffirmation") is given by Dollar General Corporation, a Tennessee corporation ("Lessee"), pursuant to the requirements of Section 25.01 of that certain Lease Agreement dated as of June 1, 2000 (the "Lease") between FU/DG Indianola, LLC, a Delaware limited liability company, as Lessor (the "Lessor") and Lessee, and is made for the benefit of the Participants with respect to the transfer of Lessor's interests to \_\_\_\_\_, a \_\_\_\_\_, (the "Transferee") pursuant to Article XXV of the Lease. Capitalized terms used herein and not otherwise defined herein shall have the meaning provided in the Lease and Appendix A thereto.

NOW, THEREFORE, Lessee hereby acknowledges and agrees as follows:

SECTION 1. Reaffirmation. Lessee acknowledges the transfer of Lessor's interests to Transferee pursuant to Article XXV of the Lease (the "Transfer") and affirms that, taking into account the Transfer, (i) Lessee remains obligated under the Lease for the payment and performance of each Lessee Obligation and that each Lessee Obligation remains in full force and effect in all respects and is not affected by the Transfer, and (ii) the Lease is in full force and effect in all respects and, to Lessee's knowledge, no Lease Default or Lease Event of Default exists thereunder.

SECTION 2. Governing Law. etc. The provisions of Section 27.07 of the Lease are incorporated herein by reference and are applicable to this Reaffirmation.

SECTION 3. Reliance. Lessee acknowledges and agrees that each Participant shall be entitled to rely on this Reaffirmation.

Transferee hereby acknowledges and agrees as follows:

SECTION 4. Lessee's Estate. Transferee acknowledges the leasehold estate and all other rights of Lessee under the Lease. Transferee shall be obligated and agrees to perform the terms and conditions of the Lease and to assume the Lessor's obligations of the transfers arising under the Lease from and after the date hereof to the same extent and with the same effect as if Transferee were a party thereto.

SECTION 5. Reliance. Transferee acknowledges and agrees that Lessee shall be entitled to rely on this Reaffirmation.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Lessee and Transferee caused this Reaffirmation to be duly executed by its respective officers thereunto duly authorized as of the day and year first above written.

**DOLLAR GENERAL CORPORATION,  
as Lessee**

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

Name:

Title:

---

**as Transferee**

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

Name:

Title:

June 1,2000

To: Dollar General Corporation

Re: Rent Account Written Direction for Dollar General Sale-Leaseback Ladies and Gentlemen:

Pursuant to Section 3.03 of that certain Lease Agreement dated June 1, 2000 (the "Lease"; capitalized terms used but not defined herein shall have the meanings given such terms in the Lease and/or Appendix A thereto) between FU/DG Indianola, LLC, a Delaware limited liability company, as Lessor (the "Lessor"), and Dollar General Corporation, a Tennessee corporation, as Lessee (the "Lessee"), instructions are hereby given with respect to the payment of Rent to the Rent Account.

Lessor, Head Lessor, Holders and the Agent instruct Lessee from this time forward unless otherwise directed by Lessor, Head Lessor, Holders and the Agent to make all payments of Rent in immediately available funds as of the relevant payment date to the account of First Union National Bank solely in its capacity as Servicer, Head Lessor, Holders and the Agent, Account No. 2020000451297, ABA 053000219, Ref: Dollar General (Loan # 37-4000001), Attn: Lisa Traylor. in the manner set forth in Section 3.03 of the Lease.

[Rest of Page Intentionally Left Blank]

The foregoing written direction relating to the Rent Account is hereby accepted by:

**FIRST UNION NATIONAL BANK,**  
in its capacity as Servicer

By: /s/ Lisak Trayio  
-----  
Name Lisak Trayio  
-----  
Title: Vice President  
-----

Acknowledged and agreed to by:

**WILMINGTON TRUST COMPANY,**  
as Agent on behalf of the Holders

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

**FIRST UNION COMMERCIAL CORPORATION, as Head Lessor**

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

**FU/DG INDIANOLA. LLC,**  
as Lessor

By: /s/ Peter M. Budko  
-----  
Name Peter. M. Budko  
-----  
Title: \_\_\_\_\_

The foregoing written direction relating to the Rent Account is hereby accepted by:

**FIRST UNION NATIONAL BANK.**  
in its capacity as Servicer

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

Acknowledged and agreed to by:

**WILMINGTON TRUST COMPANY.**  
as Agent on behalf of the Holders

*By: /s/ Donald G. MacKelcan*  
-----  
*Name: /s/ Donald. G. MacKelcan*  
-----  
*Title: Vice President*  
-----

**FIRST UNION COMMERCIAL CORPORATION, as Head Lessor**

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

**FU/DG INDIANOLA, as Lessor**

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

The foregoing written direction relating to the Rent Account is hereby accepted by:

**FIRST UNION NATIONAL BANK.**  
in its capacity as Servicer

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

Acknowledged and agreed to by:

**WILMINGTON TRUST COMPANY.**  
as Agent on behalf of the Holders

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

**FIRST UNION COMMERCIAL CORPORATION, as Head Lessor**

*By: /s/ Linda H. Minter*  
*Name: /s/ Linda H. Minter*  
-----  
*Title: Vice President*  
-----

**FU/DG INDIANOLA, as Lessor**

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

The foregoing written direction relating to the Rent Account is hereby accepted by:

**FIRST UNION NATIONAL BANK.**  
in its capacity as Servicer

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

Acknowledged and agreed to by:

**WILMINGTON TRUST COMPANY.**  
as Agent on behalf of the Holders

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

**FIRST UNION COMMERCIAL CORPORATION, as Head Lessor**

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

**FU/DG INDIANOLA, as Lessor**

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

Name: /s/ Peter Budko  
-----  
Title: \_\_\_\_\_



**PRINCIPAL LIFE INSURANCE  
COMPANY, as a Holder**

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

Name: /s/ L.S. Valentine

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

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

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

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

**MONY CAPITAL MANAGEMENT, as a Holder**

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

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

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

**PAN AMERICAN LIFE INSURANCE  
COMPANY, as a Holder**

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

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

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

**FIRST UNION SECURITIES, INC., as a Holder**

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

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

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

Signatures for MONY and PAL forthcoming from Mayer Brown & Plan

**PRINCIPAL LIFE INSURANCE  
COMPANY, as a Holder**

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

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

**MONY CAPITAL MANAGEMENT, as a Holder**

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

**PAN AMERICAN LIFE INSURANCE  
COMPANY, as a Holder**

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

**FIRST UNION SECURITIES, INC., as a Holder**

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

Name: /S/ Mark I. Adamson  
-----  
Title: Vice President  
-----

**PRINCIPAL LIFE INSURANCE  
COMPANY, as a Holder**

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

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

**MONY CAPITAL MANAGEMENT, as a Holder**

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

**PAN AMERICAN LIFE INSURANCE  
COMPANY, as a Holder**

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

*Name: /S/ Luis Iuges, Jr., C.F.A  
-----  
Title: Senoir Vice President-Investments  
-----*

**FIRST UNION SECURITIES, INC., as a Holder**

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

**PRINCIPAL LIFE INSURANCE  
COMPANY, as a Holder**

By: /s/ L.S. Valentine  
-----

Name: L.S. Valentine  
-----

Title: Counsel  
-----

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

**MONY LIFE INSURANCE COMPANY, as a Holder**

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

Name: /s/ Leonard Mazlish  
-----

Title: Investment Vice President  
-----

**PAN AMERICAN LIFE INSURANCE  
COMPANY, as a Holder**

By: /s/ Luis Ingles, Jr., C.P.A.  
-----

Name: Luis Ingles, Jr., C.P.A.  
-----

Title: Senior Vice President - Investments  
-----

**FIRST UNION SECURITIES, INC., as a Holder**

By: /s/ Mark T. Adamson  
Name: Mark T. Adamson  
Title: Vice President

**FORM OF  
REVOLVING NOTE**

\$ \_\_\_\_\_ June \_\_\_\_, 2000

FOR VALUE RECEIVED, CNL APF PARTNERS, LP, a Delaware limited partnership (the "Borrower"), hereby promises to pay to the order of \_\_\_\_\_, its successors and permitted assigns (the "Lender"), at the office of Bank of America, N.A., as Administrative Agent (the "Administrative Agent"), as set forth in the Amended and Restated Credit and Reimbursement Agreement dated June \_\_, 2000 among the Borrower, the Parents (as defined therein), the Guarantors (as defined therein), the Issuing Lender (as defined therein), the Lender Parties (as defined therein), the Administrative Agent and Banc of America Securities, LLC, as Sole Lead Arranger and as Book Manager (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement"; all capitalized terms not otherwise defined herein shall have the meanings set forth in the Credit Agreement and the terms and conditions of the Credit Agreement are expressly incorporated herein and made a part hereof), the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Revolving Loans made by the Lender to the Borrowers under the Credit Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Revolving Loan, at such office, in like money and funds, for the period commencing on the date of such Revolving Loan until such Revolving Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

This Note is one of the Revolving Notes referred to in the Credit Agreement and evidences Revolving Loans made by the Lender thereunder and is entitled to the benefits thereof.

Upon the occurrence and during the continuance of an Event of Default the balance outstanding hereunder shall bear interest as provided in Section 3.1 of the Credit Agreement. Further, in the event the payment of all sums due hereunder is accelerated under the terms of the Credit Agreement and this Note, all other Indebtedness of the Borrower to the Lender Parties owing under the Credit Documents shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby waived by the Borrower. In the event this Note is not paid when due at any stated or accelerated maturity, the Borrowers agree to pay, in addition to the principal and interest, all costs of collection, including reasonable attorneys' fees.

The date, amount, type, interest rate and Interest Period (if applicable) of each Revolving Loan made by the Lender to the Borrowers, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books, and each such recordation or endorsement shall be conclusive and binding absent manifest error; provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrowers to make a payment when due of any amount owing hereunder or under this Revolving Note in respect of the Revolving Loans to be evidenced by this Revolving Note.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF.

IN WITNESS WHEREOF, the Borrowers have caused this Note to be executed as of the date first above written.

CNL APF PARTNERS, LP, a Delaware limited partnership

By: CNL APE GP, CORP., a Delaware corporation, its general partner

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

**FORM OF  
BRIDGE NOTE**

\$ \_\_\_\_\_ June \_\_\_\_, 2000

FOR VALUE RECEIVED, CNL APF PARTNERS, LP, a Delaware limited partnership (the "Borrower"), hereby promises to pay to the order of \_\_\_\_\_, its successors and permitted assigns (the "Bridge Lender"), at the office of Bank of America, NA., as Administrative Agent (the "Administrative Agent"), as set forth in the Amended and Restated Credit and Reimbursement Agreement dated June \_\_\_\_, 2000 among the Borrower, the Parents (as defined therein), the Guarantors (as defined therein), the Issuing Lender (as defined therein), the Lender Parties (as defined therein), the Administrative Agent and Banc of America Securities, LLC, as Sole Lead Arranger and Book Manager (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement"; all capitalized terms not otherwise defined herein shall have the meanings set forth in the Credit Agreement and the terms and conditions of the Credit Agreement are expressly incorporated herein and made a part hereof), the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Revolving Loans made by the Bridge Lender to the Borrowers under the Credit Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Bridge Loan, at such office, in like money and funds, for the period commencing on the date of such Bridge Loan until such Bridge Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

This Bridge Note is one of the Bridge Notes referred to in the Credit Agreement and evidences Bridge Loans made by the Bridge Lender thereunder and is entitled to the benefits thereof.

Upon the occurrence and during the continuance of an Event of Default the balance outstanding hereunder shall bear interest as provided in Section 3.1 of the Credit Agreement. Further, in the event the payment of all sums due hereunder is accelerated under the terms of the Credit Agreement and this Note, all other Indebtedness of the Borrower to the Lender Parties owing under the Credit Documents shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby waived by the Borrower. In the event this Bridge Note is not paid when due at any stated or accelerated maturity, the Borrowers agree to pay, in addition to the principal and interest, all costs of collection, including reasonable attorneys' fees.

The date, amount, type, interest rate and Interest Period (if applicable) of each Bridge Loan made by the Bridge Lender to the Borrowers, and each payment made on account of the principal thereof, shall be recorded by the Bridge Lender on its books, and each such recordation or endorsement shall be conclusive and binding absent manifest error; provided that the failure of the Bridge Lender to make any such recordation or endorsement shall not affect the obligations of the Borrowers to make a payment when due of any amount owing hereunder or under this Bridge Note in respect of the Bridge Loans to be evidenced by this Bridge Note.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF.



IN WITNESS WHEREOF, the Borrowers have caused this Bndge Note to be executed as of the date first above written.

**CNL APE PARTNERS, LP,**  
a Delaware limited partnership

By: CNL APE GP, CORP.,  
a Delaware corporation, its general partner

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

**EXHIBIT 21**  
**SUBSIDIARIES OF THE REGISTRANT**

Name of Entity -----	Jurisdiction of Incorporation/ Organization -----
Dolgencorp, Inc.	Kentucky
Dolgencorp of Texas, Inc.	Kentucky
Dade Lease Management, Inc.	Delaware
Dollar General Financial, Inc.	Tennessee
The Greater Cumberland Insurance Company	Vermont
Nations Title Company, Inc.	Tennessee
Dollar General Intellectual Property, L.P.	Vermont
Dollar General Partners	Kentucky
DG Logistics, LLC	Tennessee
Dolgencorp of New York, Inc.	Kentucky

**EXHIBIT 23**

**CONSENT OF INDEPENDENT AUDITORS**

We consent to the incorporation by reference in the Registration Statements and related Prospectuses of Dollar General Corporation listed below of our report dated January 11, 2002 with respect to the consolidated financial statements of Dollar General Corporation included in this Annual Report on Form 10-K for the year ended February 2, 2001:

Form S-4, Registration No. 333-42704 pertaining to the offer to exchange up to \$200,000,000 of 8 5/8% Exchange Notes due June 15, 2010 for any and all outstanding 8 5/8% Notes due June 15, 2010.

Form S-3, Registration No. 333-56810 pertaining to the issuance by the Turner Children Trust of 12,556,014 shares of common stock.

Form S-3, Registration No. 333-80655 pertaining to the Dollar General Direct Stock Purchase Plan.

Form S-3, Registration No. 333-50451 pertaining to the issuance of 7,500,000 shares of common stock which may be distributed to holders of the Structured Yield Product Exchangeable for Stock ("STRYPES") of and issued by the Dollar General STRYPES Trust.

Form S-8, Registration No. 333-93309 pertaining to the Supplemental Executive Retirement Plan and the Compensation Deferral Plan.

Form S-8, Registration No. 333-65789 pertaining to the Dollar General Corporation 401(k) Savings and Retirement Plan.

Form S-8, Registration No. 333-09448 pertaining to the 1998 Stock Incentive Plan.

Form S-8, Registration No. 333-00141 pertaining to the 1995 Employee Stock Incentive Plan and the 1995 Stock Option Plan for Outside Directors.

*/s/ Ernst & Young LLP*  
-----  
*Ernst & Young LLP*

*Nashville, Tennessee*  
*January 11, 2002*

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**End of Filing**

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