SECURITIES AND EXCHANGE COMMISSION

FORM 10-12G

Initial general form for registration of a class of securities pursuant to Section 12(g)

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Copper Property CTL Pass Through Trust
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As filed with the Securities and Exchange Commission on December 29, 2020

File No.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES
PURSUANT TO SECTION 12(b) OR 12(g) OF
THE SECURITIES EXCHANGE ACT OF 1934

Copper Property CTL Pass Through Trust

(Exact name of registrant as specified in its charter)

New York	**85-6822811**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
6501 Legacy Drive, Plano, Texas	**75024-3698**
(Address of principal executive offices)	**(Zip code)**

(972) 431-1000
(Registrant' s telephone number, including area code)

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Securities to be registered pursuant to Section 12(b) of the Act:
None

Securities to be registered pursuant to Section 12(g) of the Act:
Trust Certificates
(Title of class)

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

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

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

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Explanatory Note

This registration statement is being filed by Copper Property CTL Pass Through Trust, a New York common law trust (the "Trust," "we," "our" or "us"), in order to voluntarily register the Trust Certificates (as defined below) under Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). As described further below, the Trust was formed in connection with the reorganization of J. C. Penney Company, Inc. (and together with its subsidiaries as the context requires or indicates, "J. C. Penney").

On May 15, 2020, J. C. Penney and certain of its subsidiaries (together with J. C. Penney, the "Debtors") commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court").

On December 12, 2020, the Debtors filed the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates (the "Plan of Reorganization"). The Bankruptcy Court entered an order confirming the Plan of Reorganization on December 16, 2020. A copy of the Plan of Reorganization is included as Exhibit 2.1 to this registration statement, and a copy of the Bankruptcy Court' s confirmation order of the Plan of Reorganization is included as Exhibit 99.1 to this registration statement.

On December 21, 2020, to establish the Trust as provided for in the Plan of Reorganization, J. C. Penney Corporation, Inc., a wholly-owned subsidiary of J. C. Penney, entered into the Pass-Through Trust Agreement, dated as of December 21, 2020 (the "Initial Trust Agreement"), with GLAS Trust Company LLC, as trustee.

This registration statement has been prepared on a prospective basis as though the PropCo Formation Transactions (as defined and described below) have already taken place. Therefore, except as otherwise noted or suggested by the context, the information contained in this registration statement relates to the Trust following the consummation of the PropCo Formation Transactions. There can be no assurance, however, that each of the PropCo Formation Transactions will occur or will occur as described below. Any significant modifications to the PropCo Formation Transactions will be reflected in an amendment to this registration statement.

The Trust is not required to file this registration statement pursuant to the Securities Act of 1933, as amended (the "Securities Act"). This registration statement shall not constitute an offer to sell, nor a solicitation of an offer to buy, any of the Trust' s securities.

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Cautionary Statement Regarding Forward-Looking Statements

This registration statement contains forward-looking statements, which are subject to a number of risks and uncertainties, many of which are beyond the Trust' s control. All statements regarding the Trust' s strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects, plans and objectives are forward-looking statements. When used in this registration statement, the words "anticipate," "believe," "estimate," "expect," "intend," "plan," "project," "target," "can," "could," "may," "should," "will," "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words.

All forward-looking statements speak only as of the date of this registration statement. We disclaim any obligation to update these statements unless required by law, and we caution you not to place undue reliance on them. Although we believe that the Trust' s plans, intentions and expectations reflected in or suggested by the forward-looking statements contained herein are reasonable, we can give no assurance that these plans, intentions or expectations will be achieved.

We disclose important known factors that could cause the Trust' s actual results to differ materially from our expectations under "Item 1A. Risk Factors" in this registration statement. Additional risks or uncertainties that are not currently known to us, that we currently deem to be immaterial, or that could apply to any company could also materially adversely affect the Trust' s business, prospects, financial condition and results of operations.

These cautionary statements qualify all forward-looking statements attributable to us or persons acting on the Trust' s behalf.

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Item 1. Business

Summary

Overview

The Trust' s future operations are expected to consist solely of (i) owning the Properties (as defined below), (ii) leasing the Properties under the terms of the Master Leases (as defined below) to one or more newly formed subsidiaries of Copper Retail JV LLC (collectively with its subsidiaries, "New JCP"), as the sole tenant, and (iii) subject to market conditions and the conditions set forth in the Amended Trust Agreement (as defined below and as further described under "−Description of the Trust Documents−Trust Agreement"), selling the Properties to third-party purchasers as promptly as practicable after the PropCo Closing Date (as defined below) with the intent to complete the sale of all Properties within a short period of time, in each case through certain wholly-owned property holding companies (the "PropCos" as described under "−Description of the Trust and the Trustee−Organization"). On or about the PropCo Closing Date, the Trust intends to retain an affiliate of Hilco Real Estate LLC as its independent third-party manager, unrelated to J. C. Penney or New JCP, to perform asset management duties with respect to the Properties (together with any of its affiliates, replacement or successor, the "Manager"). After the PropCo Closing Date, J. C. Penney will have no ability to exercise any control over, or have any affiliation with, the Trust.

Competitive Strengths

Highly attractive industrial assets (warehouses) and diverse portfolio of well-located retail assets. Our large, geographically diverse portfolio consists of 160 retail properties (the "Retail Properties") and six distribution centers (the "Warehouses" and, together with the Retail Properties, the "Properties") across 37 U.S. states and Puerto Rico with a presence in 42 of the top 50 metropolitan statistical areas nationally. Under the terms of the Master Leases, our tenants are required to continue to invest in the properties, which we believe enhances the value of our properties and maintains their competitive market position. J. C. Penney is a 118 year old brand, and due to its long history, the Properties acquired by the Trust tend to be located in attractive suburban and urban locations. The assets are a combination of standalone and anchor properties at malls. Our portfolio consists of select J. C. Penney assets, chosen for their alignment with our goals as a Trust to maximize value for the holders of the Trust Certificates (the "Certificateholders").

Straightforward business plan designed to maximize value through sale of assets. The Properties are governed by a triple-net master lease structure. We have no development or acquisition plans and have elected to organize as a pass-through trust. We have selected an experienced third-party manager that is contractually aligned with our goal of maximizing value through the sale of the Warehouses within six months and the Retail Properties within 12 months following (i) the expiration of Lockout Periods (as defined below) applicable to certain of the Properties or (ii) if not subject to a Lockout Period, the PropCo Closing Date. See "−Description of the Trust Documents−Master Leases−Lockout Periods."

Attractive cash flow yield from two separate well-structured master leases for owned warehouses and retail assets. The Trust has a predictable contractual cash flow, with the rents from the Warehouses accounting for 22% of the aggregate rents under the Master Leases. The Master Leases have an initial term of 20 years and are triple-net with, beginning in the third year, (i) a 2% annual escalation for the Warehouses and (ii) an annual escalation for the Retail Properties that is tied to the consumer price index. See "−Description of the Trust Documents−Master Leases." Our dividend policy is to distribute net cash flow on a monthly basis, providing a recurring yield.

Manager with unparalleled experience in maximizing value of real estate assets. We have engaged the Manager as an external manager to execute the business plan and bring extensive experience to the role. The Manager has been involved in the repositioning of over 35,000 leases and the disposition of over 200 million square feet of retail, industrial and office properties over the last 15-plus years. The Manager' s track record speaks to the expertise, capabilities and focus it will bring to optimizing the value of the Trust within the required timeframe.

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Upside from alternative use on select landlord option retail properties. The Retail Master Lease (as defined below) provides a landlord option on 23 of the Retail Properties (the "Landlord Retail Option Properties"), allowing current or future landlords to opportunistically terminate the Retail Master Lease with respect to a Landlord Retail Option Property and maximize value by selling such Landlord Retail Option Property with the ability for a buyer to utilize the Landlord Retail Option Property for an alternative purpose.

Capital structure of the Trust as well as the Master Leases provide significant flexibility for maximizing value. Capitalization of the Trust and the Master Leases have been carefully structured to facilitate the sale of individual Properties. Upon the sale of an individual Property, the Property is transferred out of the applicable Master Lease and a new individual property lease is created with the same key terms as the applicable Master Lease.

Trust Certificates

The Amended Trust Agreement creates a series of equity trust certificates designated as "Copper Property CTL Pass Through Certificates" (the "Trust Certificates"), [ ] million of which will be issued on the PropCo Closing Date. Each Trust Certificate represents a fractional undivided beneficial interest in the Trust and represents the Certificateholders' interests in the Trust. All Trust Certificates shall vote as a single class and shall be in all respects equally and ratably entitled to the benefits of the Amended Trust Agreement without preference, priority or distinction on account of the actual time or times of authentication and delivery, all in accordance with the terms and provisions of the Amended Trust Agreement. The Trust Certificates shall be the only instruments evidencing a fractional undivided interest in the Trust. The Trust Certificates do not represent indebtedness of the Trust. The Trust Certificates will not be repurchased by the Trust and no additional certificates will be issued by the Trust.

The issuance of the Trust Certificates under the Plan of Reorganization is expected to be exempt pursuant to Section 1145 of the Bankruptcy Code. Thus, the Trust Certificates would not be "restricted securities," as defined in Rule 144(a)(3) under the Securities Act, and would be freely tradable and transferable by any initial recipient thereof that (i) is not an "affiliate" of the Debtors or the Trust, as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an "affiliate" within 90 days of such transfer, and (iii) is not an entity that is an "underwriter," as defined in subsection (b) of Section 1145 of the Bankruptcy Code.

Owners of 4.9% or more of the Trust Certificates are required to deliver a certification set forth in the Amended Trust Agreement. See "Item 11. Description of Registrant' s Securities to be Registered" for a detailed description of the ownership limitations relating to the Trust Certificates.

The Trust Certificates are not, and will not be, listed on a national securities exchange; however, the Trust intends to take actions to cause the Trust Certificates to be quoted on a market operated by OTC Markets Group. See "Item 1A. Risk Factors–Risks Relating to the Trust Certificates--There is no currently established trading market for the Trust Certificates, which could limit liquidity, and it may be difficult to establish a price per Trust Certificate."

The Trust Certificates will have an identifying CUSIP number and shall be evidenced by book-entry form represented by one or more global certificates registered in the name of The Depository Trust Company ("DTC"), as depository, or Cede & Co., its nominee, for so long as DTC is willing to act in that capacity.

Description of the Trust and the Trustee

Organization

The Trust owns directly or indirectly 100% of the PropCos: (i) CTL Propco LLC, a Delaware limited liability company, and CTL Propco LP, a Delaware limited partnership, will collectively own the fee simple or

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ground leasehold title (as applicable) to the Retail Properties and (ii) CTL Propco II LLC, a Delaware limited liability company, and CTL Propco II LP, a Delaware limited partnership, will collectively own the fee simple title to the Warehouses. The Properties are located in 37 U.S. states and Puerto Rico. In the aggregate, the Warehouses and Retail Properties comprise 10.1 million square feet and 21.7 million square feet, respectively, of leasable space, all of which is leased to the tenants under the Master Leases. See "Item 3. Properties" for a detailed description of the Properties.

Business

The Trust was formed for the sole purpose of collecting, holding, administering, distributing and monetizing the Properties for the benefit of Certificateholders.

The Trust' s operations consist solely of (i) owning the Properties, (ii) leasing the Properties to New JCP (who will operate the premises pursuant to the Master Leases, including for warehousing, distribution and retail operations), and (iii) subject to market conditions and the conditions set forth in the Amended Trust Agreement (as further described under "−Description of the Trust Documents−Trust Agreement"), selling the Properties from time to time to third-party purchasers as promptly as practicable after the PropCo Closing Date, in each case through the PropCos. Except for rental proceeds from leasing the Properties and sales proceeds from selling the Properties, the Trust has no other source of revenue or cash flow. Pursuant to the Amended Trust Agreement, the Trust shall endeavor to complete the disposition of the Warehouses within six months following the PropCo Closing Date and the Retail Properties within 12 months following (i) the expiration of any applicable Lockout Periods or (ii) if not subject to such Lockout Period, the PropCo Closing Date, or in each case such longer period approved by the Certificateholders representing a majority of the Trust Certificates (the "Majority Certificateholders"). See "−Description of the Trust Documents−Master Leases−Lockout Periods."

The Retail Properties are leased pursuant to a single retail master lease (the "Retail Master Lease") to Penney Tenant I LLC ("Retail Tenant"), and the Warehouses are leased pursuant to the warehouse and distribution center master lease (the "DC Master Lease"; together with the Retail Master Lease, the "Master Leases" and individually, each a "Master Lease") to Penney Tenant II LLC ("DC Tenant"; together with Retail Tenant, the "Tenants" and individually, each a "Tenant"). Each of the Master Leases is a triple-net lease pursuant to which the Tenants are responsible for the payment of all taxes, insurance, maintenance, capital expenditures, operational costs, and other costs and expenses associated with the ownership, management, maintenance and operation of the Properties. The Tenants will pay all rent absolutely net to the Trust, without abatement, and unaffected by any circumstance (except in certain cases of major casualty or major condemnation where the applicable Tenant will have the right to terminate the applicable Master Lease with respect to the affected Property under certain circumstances or except in other limited situations expressly permitted under the Master Leases). The payment obligations of the Tenants under the Master Leases are unconditionally guaranteed by certain subsidiaries of New JCP (collectively, the "Lease Guarantors"), which are jointly controlled, as of the effective date hereof, by Simon Property Group, L.P. and Brookfield Asset Management Inc., and the obligations of Retail Tenant are further secured by a pledge of 100% of the equity interests in Retail Tenant.

Following the sale of all of the Properties and the subsequent distribution of all net sale proceeds and all net assets pursuant to the Amended Trust Agreement, the existence of the Trust will terminate 90 days after the final tax returns and the final reports required to be filed with the Securities and Exchange Commission (the "SEC") have been filed. To the extent that all of the Properties are not sold within a year after the Propco Closing Date (or such longer period approved by the Majority Certificateholders), the Properties may be transferred into a newly-formed real estate investment trust ("REIT"), contributed to an existing REIT or transferred into other investment vehicles, each of which would be beneficially owned by the Certificateholders. Any such transfer will require approval from the Majority Certificateholders.

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Dividend Policy

Commencing on [ ], 2021, the Trust will distribute on a monthly basis the proceeds from lease payments under the Master Leases (until such time as all of the Properties have been sold) and all sales proceeds from the disposition of Properties, in each case *pro rata*, to the Certificateholders as of the record date immediately preceding the applicable distribution date. Such distributions shall be net of (i) tax payments to be made by the Trust, (ii) fees and expenses of the Trustee, the Manager and any other professional advisors, and (iii) funds to be set aside for the Trustee' s and Manager' s reserve accounts.

The Trustee

GLAS Trust Company LLC serves as trustee of the Trust (the "Trustee") under the Amended Trust Agreement. The Trustee has its principal place of business at 3 Second Street, Suite 206, Jersey City, New Jersey 07311. The Trustee is unaffiliated with the Trust and the Tenants. The Trustee will have no objective or authority to engage in the conduct of a trade or business, except to the extent reasonably necessary to carry out, and consistent with, the purpose of the Trust. In particular, the Trustee will not engage in activities other than (i) facilitating the sales of the Properties; (ii) cooperating with the Manager with respect to the marketing and sale of the Properties and causing the Trust to enter into such other documents and take such other actions reasonably directed by the Manager in connection therewith; (iii) causing the Trust to enter into any purchase and sale agreement pursuant to which one or more Properties are to be sold; (iv) incurring certain de minimis permitted indebtedness in the ordinary course of business of the Trust (or its subsidiaries); (v) complying with the requirements of the Amended Trust Agreement and the Management Agreement (as defined below); and (vi) entering into all contracts and engaging in all related activities incidental, complementary or ancillary to the foregoing. The Trustee will not act other than as required pursuant to the Amended Trust Agreement. In addition, the Trustee is required to use commercially reasonable efforts to assist the Manager in causing the Tenants to comply with their obligations under the Master Leases. The Trustee is permitted to retain professionals to assist in performing duties under the Amended Trust Agreement. Notwithstanding the foregoing, the Trustee will have no obligation to supervise, nor will it be liable for, the acts or omissions of the Manager or any other person.

Fees are paid to the Trustee prior to any distributions to Certificateholders. The Trustee will be compensated by the Trust and indemnified by the Trust against any expenses it incurs relating to, or arising out of, the formation, operation or termination of the Trust, or the performance of its duties pursuant to the Amended Trust Agreement, except to the extent that such expenses result from the gross negligence, willful misconduct or bad faith of the Trustee.

The Trustee may resign at any time as Trustee of the Trust by giving 30 days' prior written notice thereof to the Certificateholders and the Manager. The Trustee may be removed at any time and for any reason as Trustee of the Trust by direction of the Majority Certificateholders.

The Manager

Hilco JCP, LLC ("Hilco") serves as manager of the Trust under the Management Agreement and will provide a management team, along with appropriate support personnel, to provide the management services to be provided by the Manager to the Trust. The Manager has its principal place of business at 5 Revere Drive, Suite 410, Northbrook, Illinois. The Manager is unaffiliated with the Trust, except that each of the Trust' s officers is an officer of the Manager.

Hilco is an affiliate of Hilco Real Estate LLC ("HRE"), a national provider of strategic real estate disposition and repositioning services. HRE provides strategic advisory and transactional services designed to minimize costs and maximize value of real estate assets. The Manager has been involved in the repositioning of over 35,000 leases and the disposition of over 200 million square feet of retail, industrial and office properties over the last 15-plus years.

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Except as otherwise provided in the Amended Trust Agreement, the Manager, on behalf of the Trust, has full power and authority to sell any and all of the Properties without further action or approval of the Certificateholders or the Trustee.

The Manager maintains a contractual, as opposed to a fiduciary, relationship with the Trust.

Trust Operating Expenses

The Trust will incur recurring expenses in connection with, among other things, payment of the fees and expenses of the Trustee; payment of the fees, expenses and commissions of the Manager; legal, accounting and auditing fees; all insurance costs incurred in connection with the Trust (including director, trustee and officer liability insurance); and all other costs and expenses of the Trust, including those set out in the Trust' s budgets, other than those to be specifically borne by Manager pursuant to the Management Agreement. See "−Description of the Trust Documents−Trust Agreement" and "−Description of the Trust Documents−Management Agreement." The Trust may also incur certain extraordinary, non-recurring expenses, including, but not limited to, taxes and governmental charges, expenses and costs of any extraordinary services performed by the Trustee, the Manager or any other service provider or counterparty of the Trust, on behalf of the Trust to protect the Trust or the interests of Certificateholders, or payments to indemnify the Trustee, the Manager or other agents, service providers or counterparties of the Trust, as applicable.

Tax Status

The Trust is intended to qualify as a liquidating trust within the meaning of United States Treasury Regulation (hereinafter "Treasury Regulation") Section 301.7701-4(d) or, in the event it is not so treated, a partnership other than a partnership taxable as a corporation under Section 7704 of the Internal Revenue Code of 1986, as amended (the "Code").

Competition

The Properties compete on a local level with other retail and warehouse properties with regards to both operations and the disposition of the Properties, which could impact the Trust' s ability to sell the Properties and the sale price that can be achieved for such sales. With respect to the assets that we own, we compete for buyers based on a number of factors that include location, rental rates and suitability of the property' s design to prospective tenants' needs.

We consider our peer group to be public and private triple-net lease REITs, particularly retail-focused REITs such as Essential Properties Realty Trust (NYSE: EPRT), Four Corners Property Trust Inc. (NYSE: FCPT), National Retail Properties (NYSE: NNN), Realty Income (NYSE: O), Store Capital (NYSE: STOR) and Vereit Inc. (NYSE: VER). Similar to our business, each of these peers own geographically diverse portfolios of triple-net leased retail properties, generally tenanted by national brands, with weighted average remaining lease terms of 10 years or greater, and with contracted lease step-ups providing high visibility of future cash flow.

Many competitors have substantially greater marketing budgets and financial resources than we do, which could limit our success when we compete with them directly. Competition could have a material effect on our occupancy levels, rental rates and property operating expenses. We also may compete for tenants with other entities advised or sponsored by affiliates of New JCP. Our ability to compete is also impacted by national and local economic trends, availability and cost of capital, maintenance and renovation costs, existing laws and regulations, new legislation and population trends. We cannot assure you that the competitive pressures we face will not have a material adverse effect on our business and our net assets in liquidation. See "Item 1A. Risk Factors−Risks Relating to Real Estate Assets."

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Employees

We do not have any employees. We are externally managed by the Manager pursuant to the Management Agreement. Our executive officers serve as officers of the Manager, and are employed by an affiliate of the Manager.

Insurance

The Master Leases require the Tenants to maintain, with financially sound insurance companies, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations. In particular, the Tenants are required to maintain (i) "replacement cost" casualty insurance coverage insuring against customary hazards, including earthquake and flood coverage, and (ii) commercial liability coverage. In addition, the Manager maintains (a) business interruption / contingent loss of rents and property insurance to protect the Trust for real property and loss of rents if primary insurance maintained by the Tenants fails, is inadequate or is not obtained by New JCP, (b) contingent lessors' risk insurance to protect the Trust against exposure for third party bodily injury and property damage claims if primary insurance maintained by the Tenants fails, is inadequate or is not obtained by New JCP, (c) customary professional liability insurance with respect to services provided by the Manager to the Trust pursuant to the Management Agreement, and (iv) customary directors' and officers' liability insurance coverage.

Environmental Matters

The Properties are subject to various environmental laws regulating, among other things, air emissions, wastewater discharges and the release of, or exposure to, hazardous materials (including asbestos). Failure to comply could result in material fines and penalties. Certain environmental laws can impose joint and several liability without regard to fault of responsible parties, including current and former owners and operators of real property, related to contamination. We could be liable with respect to contamination at currently owned properties for contamination that occurred prior to the term of ownership, at a formerly owned or operated property for contamination caused during our ownership or operation or with respect to a site to which we sent wastes for disposal. Based on Phase I environmental site assessments prepared in connection with the acquisition of the Properties, we do not believe that environmental liabilities present prior to the effective date of this registration statement or that arise following the effective date of this registration statement will have a material adverse effect on our financial condition or results of operations. However, we cannot predict the impact of unforeseen environmental liabilities or new or changed laws or regulations on properties in which we hold an interest. The Tenants and the Lease Guarantors have entered into that certain Environmental Indemnity Agreement, dated as of December 7, 2020, pursuant to which they are required to comply with applicable environmental laws with respect to the Properties from and after the effective date of the Master Leases and to indemnify us if their noncompliance results in losses or claims against us.

Statements, Filings and Reports

The Trust will comply with all reporting obligations required of companies with a class of securities registered under the Exchange Act, including timely filing Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other customary filings. In particular, after the end of each fiscal year, the Manager will cause to be prepared for the Trust an annual report containing audited financial statements prepared in accordance with accounting principles generally accepted in the United States ("GAAP"). The annual report will be in such form and contain such information as will be required by applicable laws, rules and regulations and may contain such additional information that the Manager determines shall be included. The annual report will be filed with the SEC and distributed to such persons and in such manner, as shall be required by applicable laws, rules and regulations.

Each month and each quarter, the Trustee will distribute to the Certificateholders a report prepared by the Manager. Each such report (a "Distribution Date Schedule") will set forth the payments, transfers, deposits and

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distributions to be made as described under "−Description of the Trust Documents−Trust Agreement−Distributions." Each Distribution Date Schedule will be distributed to the Certificateholders through an investor website established by the Trustee.

The Trustee will make elections, file tax returns and prepare, disseminate and file tax reports, as advised by the Manager, the Trust' s counsel or accountants or as required by any applicable statute, rule or regulation.

Fiscal Year

The fiscal year of the Trust is the period ending December 31 of each calendar year. The Trustee may in the future select an alternate fiscal year at the direction of the Majority Certificateholders.

History

On December 21, 2020, to establish the Trust consistent with the Plan of Reorganization, J. C. Penney Corporation, Inc. entered into the Initial Trust Agreement with GLAS Trust Company LLC, as trustee.

Pursuant to the Plan of Reorganization, the following transactions are expected to occur (collectively, the "PropCo Formation Transactions"):

i. J. C. Penney and certain of its subsidiaries (collectively, the "JCP Sellers") will transfer their fee or leasehold interest (as applicable) in the Properties to the PropCos (collectively, the "Properties Transfer");

ii. the Initial Trust Agreement will be amended and restated (such amended and restated agreement, the "Amended Trust Agreement") to be between Copper BidCo LLC, an entity controlled by certain of the Debtors' lenders (replacing J. C. Penney Corporation, Inc.), and GLAS Trust Company LLC, continuing as trustee;

iii. J. C. Penney will assign to the Trust the Master Leases and that certain transition services agreement, dated as of December 7, 2020 (the "Transition Services Agreement"), with New JCP; and

iv. the Trust Certificates will be issued to certain of the Debtors' lenders pursuant to the Plan of Reorganization and Section 1145 of the Bankruptcy Code in final satisfaction of such lenders' claims against the Debtors.

The Properties Transfer will occur immediately prior to the transactions described in clauses (ii) through (iv) above. The date on which the PropCo Formation Transactions occur is referred to in this registration statement as the "PropCo Closing Date." As of the date of this registration statement, the Trust does not own, directly or indirectly, the Properties or any other assets, and it is not expected to own any such assets prior to the Properties Transfer.

Description of the Trust Documents

The summaries presented below of the Amended Trust Agreement, the Master Leases and the Management Agreement (collectively, the "Trust Documents") are not complete and are qualified in their entirety by reference to the full text of the applicable agreements, which are included as exhibits to this registration statement.

Amended Trust Agreement

The Trust is governed by the Amended Trust Agreement. The following is a description of the material terms of the Amended Trust Agreement.

Governance and Approval Rights. The Amended Trust Agreement establishes the roles, rights and duties of the Trustee. The Trustee will have no objective or authority to engage in the conduct of a trade or business,

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except to the extent reasonably necessary to carry out, and consistent with, the purpose of the Trust. In particular, the Trustee will not engage in activities other than (i) collecting and distributing rental payments and sales proceeds to the Certificateholders; (ii) facilitating the sales of the Properties; (iii) cooperating with the Manager with respect to the marketing and sale of the Properties and causing the Trust to enter into such other documents and take such other actions reasonably directed by the Manager in connection therewith; (iv) causing the Trust to enter into any purchase and sale agreement pursuant to which one or more Retail Properties or Warehouses are to be sold; (v) incurring certain de minimis permitted indebtedness in the ordinary course of business of the Trust (or its subsidiaries); (vi) complying with the requirements of the Amended Trust Agreement and the Management Agreement; and (vii) entering into all contracts and engaging in all related activities incidental, complementary or ancillary to the foregoing. The Trustee will not act other than as required pursuant to the Amended Trust Agreement. In addition, the Trustee is required to use commercially reasonable efforts to assist the Manager in causing the Tenants to comply with their obligations under the Master Leases. The Trustee is permitted to retain professionals to assist in performing duties under the Amended Trust Agreement. Notwithstanding the foregoing, the Trustee will have no obligation to supervise, nor will it be liable for, the acts or omissions of the Manager or any other person.

The Trustee shall not be authorized at any time on behalf of the Trust or the Certificateholders (and shall not permit the PropCos) to reinvest the Properties or take any action, in each case, that would preclude the Trust from being treated as a "grantor trust" for U.S. federal income tax purposes or would cause the Trust to be treated as a corporation or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

The Manager, which will initially be Hilco, is an independent third-party manager engaged to perform certain asset management duties and other services with respect to the Properties. In particular, the Manager will be responsible for arranging for the sale or other disposition of the Properties.

Under the Amended Trust Agreement, the approval rights of the Certificateholders are limited to (i) approval of the incurrence of indebtedness in excess of $5,000,000, (ii) approval of sales of the Properties at prices below certain thresholds, (iii) approval of sales of the Properties beyond the targeted sales period, (iv) approval of the engagement of any Financial Advisor or Leasing Agent (each as defined in the Amended Trust Agreement), (v) approval to increase the size of, or the duration for holding, Post-Closing Reserves (as defined in the Amended Trust Agreement), (vi) approval to increase the Reserve Amount (as defined in the Amended Trust Agreement), and (vii) the engagement of a new Trustee or Manager.

Distributions of Proceeds from Lease Payments. Commencing on [ ], 2021, the Trust will distribute on a monthly basis the cash proceeds from lease payments under the Master Leases (until such time as all of the Properties have been sold), pro rata, to the Certificateholders as of the record date immediately preceding the applicable distribution date. Such distributions shall be net of tax payments to be made by the Trust, fees and expenses of the Trustee, the Manager and any other professional advisors in connection with operating or providing services to the Trust, and funds to be set aside for the Trustee' s and Manager' s reserve accounts, including for future costs and expenses. Distributions will be made only from assets of the Trust and only to the extent that the Trust has sufficient assets (over reserves for contingent liabilities and future costs and expenses, among other things) to make such payments in accordance with the Plan of Reorganization and the Amended Trust Agreement.

Distributions of Proceeds from Disposition of Properties. The Trust will distribute proceeds from the disposition of any Properties and related payments received by the Trust prior to the related distribution date with the same frequency and in the same order of priority as the distributions of proceeds from the lease payments, net of any fees (including brokers fees), commissions or other amounts payable to the Manager in connection with such disposition.

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Master Leases

The 160 Retail Properties have been leased pursuant to the Retail Master Lease to Retail Tenant and the six Warehouses have been leased pursuant to the DC Master Lease to Warehouse Tenant. Subsidiaries of the Trust are the landlord (the "Landlords") to the Tenants under each of the Master Leases. As of the PropCo Closing Date, the Trust will own, directly or indirectly, 100% of the equity interests in the Landlords under each of the Master Leases. Subject to Landlords' right to sever each Master Lease as described below, each Master Lease is a single, unitary lease of all of the applicable Properties, such that in the event of a bankruptcy proceeding, the Tenant shall only be entitled to assume, reject or assign the entire Master Lease and not merely a portion thereof.

Guaranties. The payment obligations of the Tenants under each of the Master Leases are unconditionally guaranteed by the Lease Guarantors pursuant to two separate guaranties (each, a "Lease Guaranty"), and the obligations of Retail Tenant is further secured by a pledge of 100% of the equity interests in Retail Tenant.

Term. Each Master Lease has an initial term of 20 years, followed by five extension option periods of five years each, for a fully-extended term of 45 years. Each five-year extension period may be exercised by the Tenant provided that (i) with respect to the DC Master Lease, no event of default then exists and (ii) with respect to the Retail Master Lease, no Major Event of Default (as defined in the Retail Master Lease) or other Disabling Event (as defined in the Retail Master Lease) with respect to a particular Property then exists. A Major Event of Default includes, in addition to the Tenant' s failure to pay rent, breaches of the permitted use or subletting covenants under the Retail Master Lease for Properties 15% or more of the aggregate base rent allocation amounts for the first lease year of the Properties then subject to the Retail Master Lease. Other than upon mutual agreement, or in limited circumstances in the case of certain casualty or condemnation events or with respect to Tenant Option Properties (as defined in the Retail Master Lease), the Tenants do not have a right to terminate the Master Leases. The Trust only has the right to terminate the Master Leases (a) upon the occurrence of an event of default under the DC Master Lease, (b) upon the occurrence of a Major Event of Default under the Retail Master Lease (or upon the occurrence of an event of default with respect to a particular Property (a "Defaulted Property"), but only with respect to such Defaulted Property), or (c) with respect to Landlord Option Properties (as defined in the Master Leases).

Rent−Retail Master Lease. The initial base rent for the Retail Master Lease is $121.2 million per year, subject to a rental abatement of 50% ($60.6 million) for the first year. During each subsequent lease year, commencing with the third lease year, the base rent shall be subject to a consumer price index adjustment, provided that such adjustment shall not (i) result in an increase that exceeds 2% of the then-applicable base rent or (ii) decrease the then-applicable base rent. Such adjustment is described more fully in "Item 2. Financial Information− Management' s Discussion and Analysis of Financial Condition and Results of Operations−Results of Operations−Revenue." During each lease year during any renewal term, the base rent shall be an annual amount equal to the greater of (a) the base rent for the immediately preceding lease year (as adjusted by subtracting the base rent allocation amounts allocable to any terminated properties) and (b) the fair market rent for such renewal term, as determined in accordance with a valuation procedure set forth in the Retail Master Lease. In addition to base rent, the rent under the Retail Master Lease includes the payment by Retail Tenant of all triple-net costs and expenses attributable to the Retail Properties as additional rent.

Rent−DC Master Lease. The initial base rent for the DC Master Lease is $35.4 million per year. During each subsequent lease year commencing with the third lease year, the base rent shall be subject to a 2% escalation. During each lease year during any renewal term, the base rent shall be an annual amount equal to the greater of (i) the base rent for the immediately preceding lease year (as adjusted by subtracting the base rent allocation amounts allocable to any terminated properties) and (ii) the fair market rent for such renewal term, as determined in accordance with a valuation procedure set forth in the DC Master Lease. In addition to base rent, the rent under the DC Master Lease includes the payment by DC Tenant of all triple-net costs and expenses attributable to the Warehouses as additional rent.

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Triple-Net Lease; Alterations. Each Master Lease is structured as a triple-net lease, with each Tenant responsible for the payment of all taxes, insurance, maintenance, capital expenditures, operational costs, and other costs and expenses associated with the ownership, management, maintenance and operation of the Properties (subject to exceptions in certain limited scenarios as set forth in the Master Leases). In addition, each Tenant is required to indemnify, defend and hold the Landlord harmless from and against various claims, litigation and liabilities arising in connection therewith. The Tenant will pay all rent absolutely net to the Landlord, without abatement, and unaffected by any circumstance (except in certain cases of major casualty and major condemnation events or otherwise upon certain limited events expressly permitted under the Master Leases).

Landlord Option Properties. The Retail Master Lease provides the Retail Landlord (as defined in the Retail Master Lease) with several independent options, exercisable from time to time in the Retail Landlord' s sole discretion and upon 24 months' prior written notice to Retail Tenant, to terminate the Retail Master Lease as to any one or more of the 23 Landlord Retail Option Properties in accordance with the terms and conditions of the Retail Master Lease; provided, that landlord may only exercise such option with respect to up to eight Landlord Option Properties in any individual lease year. The DC Master Lease provides the Warehouse Landlord (as defined in the DC Master Lease) with several independent options, exercisable from time to time in Warehouse Landlord' s sole discretion and upon 24 months' prior written notice to DC Tenant, to terminate the DC Master Lease as to any Landlord Option Properties (as defined in the DC Master Lease) in accordance with the terms and conditions of the DC Master Lease.

Tenant Option Properties. The Retail Master Lease provides Retail Tenant with several independent options, exercisable from time to time in Retail Tenant' s sole discretion and upon 24 months' prior written notice to Landlord, to terminate the Retail Master Lease as to all or a portion of any one or more of the six Tenant Option Properties in accordance with the terms and conditions of the Retail Master Lease; provided, that Retail Tenant may only exercise such option with respect to up to five Tenant Option Properties in any individual lease year.

Substitution Options and Go Dark Rights. The Retail Master Lease provides Retail Tenant with several independent options to terminate the Retail Master Lease with respect to one or more sub-performing properties upon replacement of such sub-performing properties with a qualified replacement property in accordance with the terms and conditions of the Retail Master Lease. Notwithstanding the foregoing, Retail Tenant shall only be entitled to exercise a substitution option (i) between the third and 15th anniversary of the commencement date of the Retail Master Lease and (ii) if the aggregate allocated base rent amounts for all Go Dark/Substitution Properties (as defined in the Retail Master Lease) during the applicable period (as described in the Retail Master Lease) is less than or equal to 15% of the first year' s base rent. The Retail Master Lease also provides Retail Tenant with the limited right to "go dark" (i.e., cease operations) at one or more Retail Properties in certain limited circumstances as set forth in the Retail Master Lease; provided that such right does not relieve Retail Tenant of its obligation to make any rent payments that are due and owing.

Tenant Offer Rights. The Master Leases contain preferential offer rights in favor of the Tenant with respect to certain Properties, which enable the Tenant, in connection with a potential sale of such Properties, to acquire such Properties for a price determined in accordance with the procedures set forth in the Master Leases.

Lockout Periods. The Landlord has agreed not to deliver notice to the Tenant formally commencing the sales process at those Properties subject to the "Tenant Offer Rights" described above prior to the dates specified in the applicable Master Lease for such Properties (the "Lockout Periods"), the latest of which is in the second quarter of 2021. Approximately 70 of the Retail Properties, and each of the Warehouses, are subject to a Lockout Period.

Lease Severance. The Landlords may at any time and from time to time, upon notice to a Tenant, in conjunction with a sale or otherwise, sell one or more Properties and sever such Properties from the Master

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Leases, and such severed Properties shall (upon such severance) be subject to a separate severed lease, which shall be effective as of the date of severance. The effect of severance is more fully described in the Master Leases.

Assignment and Subletting. Under the Master Leases, subject to certain affiliate transactions and other limited exceptions (which include a change of control of the Tenant or a Lease Guarantor if the transferee has a tangible net worth of $500,000,000 or more), the Tenant does not have the right to assign any portion of the Master Leases. The Tenant has the right to sublet, without the Landlord' s consent, up to (i) 15% of the aggregate gross leasable square footage of the Retail Properties and (ii) 25% of the aggregate gross leasable square footage of the Warehouses. In connection with any proposed sublease, the Landlord does not have a right to recapture the subleased portion of the premises or to share in the profits received by the Tenant in connection with such sublease (subject to the Warehouse Landlord' s limited right to share in such profits in relation to two Warehouses, as described in the DC Master Lease); provided, however that such sublease does not relieve the Tenant or the Lease Guarantors from the obligation to make any rent payments that are due and owing if the sublessee fails to do so.

Excess Development Parcels. Under the DC Master Lease, the Warehouse Landlord is permitted to subdivide certain of the Warehouses to create excess development parcels so long as such parcels do not contain any existing improvements or materially interfere with DC Tenant' s access to or other rights to use and enjoy such Warehouses, and to thereafter sell such subdivided parcels to third-party buyers.

Insurance. The Master Leases require the Tenants to maintain, with financially sound insurance companies, insurance (subject to New JCP' s deductibles in effect as of the effective date) in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations. The Master Leases provide that the amount and type of insurance that the Tenants had in effect as of the date upon which the Master Leases became effective satisfies for all purposes the requirements to insure the Properties. However, such insurance coverage does not currently contain rental interruption coverage and only requires that the insurance companies providing such coverage maintain ratings with A.M. Best Company. The Master Leases require each Tenant to obtain, upon the request of the Landlord, quotations from insurers to enhance the Tenant' s then-existing coverage by adding both rental interruption coverage and by requiring that the other insurance coverage being maintained by the Tenant be provided by insurance companies that maintain ratings with Standard & Poor' s Ratings Services in addition to A.M. Best Company, and also permits the Landlord to obtain independent quotes to provide such enhanced coverage pursuant to a separate policy or policies obtained by the Landlord at the Landlord' s expense; provided that the Tenant has agreed to contribute up to $300,000 per year for the additional premium cost to obtain rental interruption coverage. In addition to the foregoing, the Master Leases require each Tenant to obtain, upon the request of the Landlord, quotations from insurers to reduce the Tenant' s then-existing deductibles, and also permits the Landlord to obtain independent quotes to reduce such deductibles pursuant to a separate policy or policies obtained by the Landlord at the Landlord' s expense. The foregoing insurance coverage may not be sufficient to fully cover all losses.

Other Terms. The Master Leases contain various terms and conditions related to indemnification, casualty and condemnation, financial reporting and other customary matters. The Master Leases also include events of default. Among other remedies, the Landlords have the right to terminate the Master Leases during an event of default (as described in "–Term" above, and subject to notice and cure periods (including any extended cure period) in favor of the Tenants and certain Property substitution rights of the Tenants).

Management Agreement

The Trust has entered into a management agreement with the Manager (the "Management Agreement"), pursuant to which the Manager will be the exclusive provider of certain management and other services with respect to the Properties, including (i) arranging for the sale or other disposition of the Properties,

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(ii) coordinating with the Trustee in connection with the disbursement and collection of the Trust' s funds, (iii) paying the debts and fulfilling the obligations of the Trust (but only to the extent the Trust has working capital to pay and fulfill same on deposit in the Manager' s operating or administrative reserve accounts (as applicable and provided for pursuant to the Amended Trust Agreement)), and (iv) supervising the performance of professionals engaged by or on behalf of the Trust, in each case upon the terms and subject to the conditions in the Amended Trust Agreement.

Pursuant to the Management Agreement, the Manager will provide a management team along with appropriate support personnel, including individuals who shall serve as the chief executive officer (the "Executive Officer") and the chief financial officer (the "Financial Officer" and, together with the Executive Officer, the "Officers"), of the Trust to provide the management services.

Operations and Management. Pursuant to the terms of the Management Agreement, the Manager will be responsible for the sale or other disposition of the Properties. Except as otherwise provided in the Amended Trust Agreement, the Manager, on behalf of the Trust, has full power and authority to sell any and all of the Properties without further approval of the Certificateholders or the Trustee.

In addition, the Manager is responsible for the day-to-day operations of the Trust and its subsidiaries and performs (or causes to be performed) such services and activities relating to the Trust' s subsidiaries' assets and operations as may be appropriate, which may include the following:

i. administer the Master Leases and activities relating to compliance therewith, including (a) enforcement of all and remedies of the Landlords with respect to all Properties then leased thereunder and (b) review of financial information and financial and other reporting received from the Tenants and the Lease Guarantors pursuant to the Master Leases and the preparation of the periodic Reporting Package (as such term is defined in each Master Lease) for the benefit of the Certificateholders;

ii. property level management, including, without limitation, (a) review and monitoring of lease payments and common area maintenance and real estate tax payments, (b) review capital expenditure plans and activities, and (iii) collection of rent and other income due to the Trust in accordance with the Master Leases or otherwise related to the Properties;

iii. develop, review and certify all Trust filings required pursuant to the Exchange Act;

iv. all required accounting functions;

v. investor relations matters, including quarterly earnings calls, investor meetings and development and maintenance of the Trust website with relevant investor materials;

vi. create and distribute property sales and marketing status activity reports;

vii. review of property condition reports;

viii. oversight and administration of environmental remediation measures;

ix. oversight and support of key property counterparties, including, among other parties, ground lessors, reciprocal easement agreement counterparties and municipal counterparties;

x. creation of global marketing strategy, structuring plan and sales process, including the direction and management of third-party brokers as appropriate;

xi. third party broker management and supervision, including the selection of such brokers, development of a marketing plan and coordination of a negotiating strategy; and

xii. such other services related to the management of the business and affairs of the Trust as may be mutually agreed between the parties to the Management Agreement from time to time.

Term. The Management Agreement shall be effective as of the PropCo Closing Date and shall continue for a period of 24 months thereafter. The Management Agreement shall be automatically extended in successive

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six-month increments until all of the Properties are sold and the Trust is dissolved or unless otherwise earlier terminated in accordance with its terms. The Trust may terminate the Management Agreement (i) in the event of a liquidation or dissolution of the Manager; (ii) upon the occurrence of certain events with respect to the bankruptcy or insolvency of the Manager; or (iii) for any reason or no reason by providing not less than 60 days' prior written notice thereof to Manager. In conjunction with a termination of the Management Agreement by the Trust, unless the termination is as a result of the Manager' s fraud, material misrepresentation, willful misconduct, material breach of the Management Agreement, misapplication or misappropriation of funds or gross negligence for cause (in which case the Management Agreement may be terminated immediately and no termination fee shall be due), the Trust will pay the Manager a termination fee equal to the fee for 90 days of service under the Management Agreement at the Base Fee (as defined below).

Liability and Indemnification. The Manager assumes no responsibility other than to render the services called for under the Management Agreement. The Trust will provide the Manager with a customary indemnity with respect to the Manager' s liability for any negligence related to, arising out of or in connection with the services to be provided by the Manager under the Management Agreement or related to the Properties or any portion thereof, and the Manager is not responsible for any action of the Trustee in following or declining to follow any advice or recommendation of the Manager, except where any actions or losses arise out of or are based on any action or failure to act by the Manager and are judicially determined to have resulted or arisen from the Manager' s bad faith, gross negligence, reckless disregard or willful misconduct. The Manager will not be indemnified for any actions or losses in respect of or arising from the Manager' s bad faith, willful misconduct, gross negligence or reckless disregard of its duties under the Management Agreement.

Compensation and Reimbursement of Expenses. As compensation for its services thereunder, the Manager shall receive an annual base management fee equal to [ ] (the "Base Fee"). In addition, upon the closing of each sale of a Property, the Manager shall receive an asset management fee that shall be calculated as a percentage of the sales proceeds of each Property calculated on a sliding scale that compares the sales proceeds to predetermined base values. For additional information, refer to the Management Agreement attached as Exhibit 10.4 hereto. In addition, we are required to reimburse the Manager for its documented expenses incurred in performing services for us in connection with the operation of our business, including property management, legal, property accounting, IT and operations.

Emerging Growth Company Status

The Trust is an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). As an emerging growth company, we are eligible to take advantage of certain exemptions from various reporting and disclosure requirements that are applicable to public companies that are not emerging growth companies. For as long as the Trust is an emerging growth company, unlike other public companies, it will not be required to, among other things:

provide an auditor' s attestation report on management' s assessment of the effectiveness of its system of internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act of 2002; or

comply with any new audit rules adopted by the Public Company Accounting Oversight Board after April 5, 2012, unless the SEC determines otherwise.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards that have different effective dates for public and private companies. In other words, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies.

The Trust will remain an emerging growth company until the earliest to occur of the following: (i) the last date of the fiscal year during which it has $1.07 billion or more in annual gross revenues; (ii) the date on which

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the Trust becomes a "large accelerated filer," as defined in Rule 12b-2 of the Exchange Act; (iii) the date on which the Trust has issued more than $1.0 billion of non-convertible debt over the previous three-year period; and (iv) the last day of the fiscal year following the fifth anniversary of the date of the first sale of Trust Certificates pursuant to an effective registration statement.

We do not believe that being an emerging growth company will have a significant impact on the Trust' s business. Even once we are no longer an emerging growth company, for so long as we are not a large accelerated filer or an accelerated filer under Section 12b-2 of the Exchange Act, we will not be subject to auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002. In addition, even once we are no longer an emerging growth company, so long as we are managed by the Manager and we do not directly compensate our executive officers, or reimburse the Manager for the salaries, bonuses, benefits and severance payments for any persons who also serve as one of our executive officers or as an officer of the Manager, we do not expect to include disclosures relating to executive compensation in our periodic reports or proxy statements. As a result, we do not expect to be required to seek the Certificateholders' approval of executive compensation and golden parachute compensation arrangements pursuant to Section 14A(a) and (b) of the Exchange Act regardless of our emerging growth status.

Investment Policies

Our investment objective is to sell the Properties to third-party purchasers as promptly as practicable after the PropCo Closing Date. The Trust does not expect to acquire new real estate assets to supplement or diversify its portfolio. Neither the Trust, the Trustee nor the Manager shall be permitted to invest or reinvest the Properties except as otherwise provided herein.

Item 1A. Risk Factors

An investment in the Trust Certificates involves various risks. Any of the risk factors set forth below could significantly and adversely affect the Trust' s business, prospects, financial condition and results of operations. The risks and uncertainties described below are not the only ones the Trust faces, but they do represent those risks and uncertainties that we believe are material to an investment in the Trust Certificates.

Risks Relating to Limited Purpose and Recent Formation

The Trust has a limited purpose and does not expect to generate or receive cash other than from limited sources. Pursuant to the Amended Trust Agreement, the Trust was established and exists for the purpose of collecting, holding, administering, distributing and liquidating the Properties for the benefit of the Certificateholders. The Amended Trust Agreement further provides that the Trust shall have no objective or authority to continue or to engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the Trust as set forth therein. The Trust does not expect to receive cash other than through lease payments from the Tenants and from sales of the Properties.

The Trust has no operating history. The Trust was established in December 2020. The Trust has no operating history upon which to forecast, among other things, its future cash proceeds from sales of the Properties. In assessing its business prospects, you should consider various risks and difficulties encountered by newly organized companies. These risks include the Trust' s ability to implement and execute its business plan and respond effectively to operational and competitive challenges.

The Trust will incur significant costs as a result of the registration of the Trust Certificates under the Exchange Act and the Trust becoming a reporting issuer under the Exchange Act. As a reporting entity under the Exchange Act, the Trust will incur significant legal, accounting and other expenses that a non-reporting entity would not incur. In addition, the Exchange Act imposes various requirements on reporting entities that will require the Executive Officer, the Financial Officer and the Manager' s employees, management and other personnel to devote a substantial amount of time to compliance initiatives.

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Risks Relating to Real Estate Assets

There is limited liquidity in real estate investments. Real estate is a relatively illiquid asset. The Trust may not be able to sell the Properties at the optimal time or for an optimal price in order to maximize its recovery. The number of potential buyers for the Retail Properties may be limited by the presence of such properties in retail or mall complexes. In addition, the Trust' s ability to sell or dispose of the Properties may be hindered by the fact that such Properties will be subject to the Master Leases, as the terms of the Master Leases or the fact that the Properties are subject to the leasehold rights of the Tenants may make such Properties less attractive to a potential buyer than alternative properties that may be for sale.

The Trust's real estate asset portfolio's tenant base is not diversified. The Properties consist entirely of retail stores and distribution centers leased to New JCP under the Master Leases. Pursuant to the Amended Trust Agreement, the Trust will not acquire new real estate assets to diversify the tenants in its portfolio. This lack of diversification means that the Trust is particularly subject to the risks and fluctuations in the price of retail-related real estate, and any worsening of the downturn in this particular market would result in a significant and outsized negative impact on the Trust. In addition, periods of economic slowdown or recession or declining demand for real estate in the United States, or the public perception that any of these events may occur, could result in a general decline in property values, which could materially adversely affect the Trust' s business, financial position, results of operations or cash flow. This could, in turn, adversely affect the Trust' s ability to make distributions to the Certificateholders.

If the Trust is unable to sell the Properties within a reasonable period of time, it may need to consider bulk marketing and disposition. The pool of potential buyers for the Properties is limited and, depending on market conditions, price reductions or bulk sales may be necessary. One or more bulk sales of the Properties may not yield as high an aggregate value as individual property sales, and a bulk sale may possibly depress prices in that market, negatively affecting the Trust' s ability to recover the highest value for its remaining properties.

If the Trust is unable to sell the Properties within the approved sale period, the Properties may be transferred into a REIT. The Trust may not be able to sell all of the Properties within the one-year sale period (or such longer period as may be approved by the Majority Certificateholders). In such case, the Manager will develop a plan for the conversion of one or more subsidiaries of the Trust to a REIT, the contribution of one or more of the Properties to an existing REIT, or the transfer of the Properties to an alternative investment vehicle. If the remaining Properties are held by a newly-formed REIT, the requirements applicable to such a REIT may delay further sales of Properties. Upon transfer of properties into a REIT, the amount or timing of distributions may be negatively affected.

Competition from other sellers of commercial real properties in the markets in which the Properties are located may adversely affect the Trust's financial condition and net assets in liquidation. The addition of new retail properties and warehouses in the markets where the Properties are located may increase the available supply of similar properties, creating downward pressure on sales prices and protracted sales periods for the Properties. In addition, any sales that do not satisfy the guidelines set out in the Amended Trust Agreement will require the consent of two-thirds of the Certificateholders. Other sellers of retail properties or warehouses will generally not be subject to similar selling restrictions, which may put the Trust at a competitive disadvantage relative to other sellers.

The land underlying some of the Properties is subject to ground leases, which could limit our use of such Properties, and a breach or termination of the ground leases could materially and adversely affect us. We lease a portion of the land underlying some of the Properties from third parties through ground leases covering such land. As a lessee under a ground lease, we are exposed to the possibility of losing the right to use the portion of the Properties covered by the ground lease upon termination, or an earlier breach by us, of the ground lease. The ground lease may also restrict our use of such Properties, which may limit our flexibility in renting such Properties and may adversely impact our ability to sell such Properties. In addition, certain ground leases contain

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options in favor of the ground lessor to purchase the ground lessee' s leasehold interest under certain circumstances, including cessation of the operation of retail business at the applicable Property.

Environmental compliance costs and liabilities associated with the Properties may materially impair the value of those assets. As an owner of real property, the Trust will be subject to various federal, state and local environmental and health and safety laws and regulations. Although the Trust will not operate or manage the Properties, the Trust may be held primarily or jointly and severally liable for costs relating to the investigation and clean-up of any property from which there has been a release or threatened release of a regulated material as well as other affected properties, regardless of whether the Trust knew of or caused the release. The failure to properly clean a Property may adversely affect our ability to lease, sell or rent the Property or to borrow funds using the Property as collateral. Further, some environmental laws create a lien on a contaminated site in favor of the government for damages and the costs the government incurs in connection with such contamination. In addition, the presence of contamination or the failure to remediate contamination may adversely affect the Trust' s ability to sell the Properties.

Adverse weather conditions and natural disasters could adversely affect the Trust's operations and results. Additionally, the Trust may not be able to obtain insurance at reasonable rates for natural disasters and other events that are beyond its control. Although the Tenants are required to maintain property insurance coverage, such coverage is subject to deductibles and limits on maximum benefits. We cannot assure you that the Tenants or the Trust will be able to fully insure such losses or that, in the case of business interruption coverage, such insurance will be maintained at all, or that the Tenants or the Trust will be able to fully collect, if at all, on claims resulting from such natural disasters. Inflation, changes in building codes and ordinances, environmental considerations and other factors also might make it infeasible to use insurance proceeds to replace the damaged property. Furthermore, the Tenants or the Trust may not be able to obtain insurance for these types of events for all of the Properties at reasonable rates.

Risks Relating to Leasing to the Tenants

The Trust will be dependent on New JCP as a tenant until the Properties are sold. Therefore, an event that has a material adverse effect on New JCP's businesses, financial positions or results of operations could have a material adverse effect on the Trust's business, financial position or results of operations. Immediately following the PropCo Closing Date, New JCP will be the sole lessee of the Properties pursuant to the Master Leases. Together with the proceeds from sales of the Properties, the rent and other payment obligations under the Master Leases will account for all of the Trust' s revenues. Additionally, because the Master Leases are triple-net leases, the Trust will depend on New JCP to pay all insurance, taxes, utilities and maintenance and repair expenses in connection with the Properties and to indemnify, defend and hold the Landlords harmless from and against various claims, litigation and liabilities arising in connection therewith. See "Item 1. Business−Description of the Trust Documents−Master Leases−Triple-Net Lease; Alterations" for more information. Although the Lease Guarantors will guarantee the Tenants' obligations under the Master Leases, there can be no assurance that the Lease Guarantors and the Tenants will have sufficient assets, income and access to financing to enable them to satisfy their payment obligations on account of the Master Leases. The inability or unwillingness of the Tenants and the Lease Guarantors to meet their rent and other obligations under the Master Leases and the related Lease Guaranty could materially adversely affect the Trust' s business, financial position or results of operations, including the Trust' s ability to make distributions to the Certificateholders. In addition, due to the Trust' s dependence on rental payments from the Tenants as a primary source of revenues (in addition to sales proceeds from the sale of Properties), the Trust may be limited in its ability to enforce its rights under the Master Leases or to terminate the Master Leases. Failure by a Tenant and the Lease Guarantors to comply with their obligations under the Master Leases and the Lease Guaranties, as applicable, could require the Trust to find another tenant for such Property, and there could be a decrease or cessation of rental payments. In such event, the Trust may be unable to locate a suitable tenant at similar rental rates or at all, which would have the effect of reducing the Trust' s rental revenues.

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The bankruptcy or insolvency of the Tenants and the Lease Guarantors could result in the termination of the Master Leases and material losses to the Trust. A bankruptcy or insolvency of the Tenants (which will be the Trust' s sole tenants) and the Lease Guarantors (which will be the Trust' s sole source of credit support for the Tenants' obligations under the Master Leases) could result in a loss of a substantial portion of the Trust' s revenue and materially and adversely affect the Trust. Each Master Lease is a single, unitary lease of all of the applicable Properties, such that in the event of a bankruptcy proceeding, the Tenant shall only be entitled to assume, reject or assign the entire Master Lease and not merely a portion thereof. Any claims against a bankrupt Tenant for unpaid future rent are subject to statutory limitations that would likely result in the Landlord' s receipt, if at all, of rental revenues that are substantially less than the contractually specified rent owed. In addition, any claim such Landlord has for unpaid past rent would likely not be paid in full. If a Tenant becomes bankrupt or insolvent, federal law may prohibit the Landlord from evicting such Tenant based solely upon such bankruptcy or insolvency. The Trust may also be unable to re-lease a terminated or rejected space or re-lease it on comparable or more favorable terms. If the Trust does re-lease rejected space, it will likely incur significant costs for brokerage, marketing and tenant inducement expenses. In addition, although the Trust believes that the Master Leases are "true leases" for purposes of bankruptcy law, it is possible that a bankruptcy court could re-characterize the lease transactions set forth in the Master Leases as a secured lending transaction, in which case the Trust would not be treated as the owner of the property and could lose certain rights as the owner in the bankruptcy proceeding.

The Trust is dependent on the retail industry and may be susceptible to the risks associated with it, which could materially adversely affect its business, financial position or results of operations. As the landlord of retail stores and warehouses, the Trust is impacted by the risks associated with the retail industry, which could be adversely affected by economic conditions in general, changes in consumer trends and preferences and other factors over which the Trust has no control. As the Trust is subject to risks inherent in substantial investments in a single industry, a decrease in the retail industry would likely have a greater adverse effect on its revenues than if the Trust owned a more diversified real estate portfolio, particularly because the ability of the Tenants and the Lease Guarantors to pay the rent under the Master Leases will be based, over time, on the performance of the retail stores operated by New JCP at the Properties and New JCP' s other properties. The retail industry is characterized by a high degree of competition among a large number of participants, and competition is intense in most of the markets where the Properties are located. Additionally, decreases in discretionary consumer spending brought about by weakened general economic conditions such as lackluster recoveries from recessions, high unemployment levels, higher income taxes, low levels of consumer confidence, cultural and demographic changes and increased stock market volatility may negatively impact the Trust' s revenues and operating cash flows. In particular, the global outbreak of the COVID-19 coronavirus and its rapid and continuing spread across the globe, including the United States, is having an unprecedented impact on the global and the U.S. economy in general, and the retail industry in particular.

Risks Relating to the Trust Certificates

The Trust cannot predict with certainty the timing or amount of distributions to the Certificateholders. It is not possible to predict with certainty the timing and amount of future distributions to the Certificateholders. The cash receipts that distributions are based on cannot be predicted with certainty because they are subject to conditions that are beyond the Trust' s control or that are inherently uncertain, such as the amount and timing of the Trust' s sale of the Properties. As the Trust continues to sell Properties, the cash available from lease payments will decrease and correspondingly so will distributions to the Certificateholders. In addition, as such payments decrease, it is possible that the amount to be distributed will not be sufficient to cover expenses, which must be paid prior to distributions to the Certificateholders. It is therefore possible that for any distribution date there may be a limited distribution or no distribution to Certificateholders. Further, the Trust' s objective is to sell all Properties to third-party investors as promptly as practicable after the PropCo Closing Date, and the Trust is not permitted to acquire new or additional properties, which may increase certain of the risks discussed herein. In addition, certain Properties cannot be sold immediately and therefore Certificateholders may need to hold the

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Trust Certificates for an extended period of time in order to receive distributions that include the proceeds of the sales of such Properties. See "Item 1. Business−Description of the Trust Documents−Master Leases−Lockout Periods."

The Trust Certificates are not suitable as a long-term investment. The Trust intends to complete the sale of the Properties in as short a time as is consistent with the maximization of the value of its assets, without regard to the potential long-term capital appreciation of the Properties. In particular, subject to market conditions, the Trust has the stated objective of, subject to any Lockout Periods, selling the Warehouses within six months and selling the Retail Properties within 12 months. See "Item 1. Business−Description of the Trust Documents−Master Leases−Lockout Periods."

The value of the Trust Certificates is expected to decrease over time. The value of the Trust Certificates will depend primarily on the anticipated net liquidation value of the assets of the Trust, which is expected to decrease with each sale of a Property.

There is no currently established trading market for the Trust Certificates, which could limit liquidity, and it may be difficult to establish a price per Trust Certificate. There is no currently established trading market for the Trust Certificates, and the Trust does not intend to seek to have the Trust Certificates listed on any national securities exchange. The Trust intends to make efforts to cause the Trust Certificates to be traded over-the-counter, but there is no assurance of success in doing so or that such trading will continue. In addition, over-the-counter trading of securities can halt for a variety of reasons. To the extent that trading in the Trust Certificates is suspended or halted for any reason, whether on a temporary or permanent basis, investors may not be able to buy or sell Trust Certificates in an efficient manner, which could adversely affect the value of the Trust Certificates. Also, a secondary market for the Trust Certificates may not develop. If a secondary market does develop, it might not continue or it might not be sufficiently liquid to allow you to resell any of your Trust Certificates.

If a trading market for Trust Certificates develops, the market price may be volatile. Many factors could cause the market price of the Trust Certificates to rise and fall, including the following:

sales of Properties held by the Trust;

changes in real estate market conditions;

actual or anticipated fluctuations in the Trust' s quarterly or annual financial results;

the financial guidance and projections the Trust may provide to the public, any changes in such guidance and projections, or the failure to meet such guidance and projections;

changes in the market valuations of other companies in the same industry as the Trust;

various market factors or perceived market factors, including rumors, whether or not correct, involving the Trust, the Properties, potential buyers of the Properties, the impact of the preferential offer rights held by the Tenants and the Trust' s competitors;

sales, or anticipated sales, of large blocks of Trust Certificates, including short selling by investors;

regulatory developments;

litigation and governmental or regulatory investigations; and

general economic, political and financial market conditions or events.

To the extent that there is volatility in the price of Trust Certificates, the Trust may also become the target of securities litigation. Securities litigation could result in substantial costs and divert the Trustee' s attention and the Trust' s resources as well as depress the value of the Trust Certificates.

Certain Certificateholders may be deemed under the Bankruptcy Code to be "underwriters" and may not be able to sell or transfer their Trust Certificates in reliance upon the Bankruptcy Code's exemption from the

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registration requirements of federal and state securities laws provided by Section 1145 of the Bankruptcy Code. The issuance of the Trust Certificates is expected to be exempt pursuant to Section 1145 of the Bankruptcy Code. However, any initial recipient thereof that (i) is an "affiliate" of the Debtors or the Trust, as defined in Rule 144(a)(1) under the Securities Act, (ii) has been such an "affiliate" within 90 days of such transfer, or (iii) is an entity that is an "underwriter," as defined in subsection (b) of Section 1145 of the Bankruptcy Code will not be permitted to freely sell their Trust Certificates. Such persons may include holders of 10% or more of the Trust Certificates, and such persons may not be able to offer or sell their Trust Certificates without registration under the Securities Act or applicable state securities (i.e., "blue sky") laws unless such offer and sale is exempted from the registration requirements of such laws. The offer and sale of Trust Certificates by statutory underwriters in reliance upon an exemption from registration under the Securities Act may require compliance with the requirements and conditions of Rule 144 of such law, including those regarding the holding period, the adequacy of current public information regarding the Trust, sale volume restrictions, broker transactions and the filing of a notice. Although the Trust intends to enter into a customary registration rights agreement in order to register the Trust Certificates for resale, such registration statement may not be effective at the time when a statutory underwriter wishes to sell its Trust Certificates.

The Amended Trust Agreement includes provisions that limit the Certificateholders' approval rights. Under the Amended Trust Agreement, the Certificateholders have limited approval rights and the Trust will not have regular Certificateholder meetings. The Certificateholders take no part in the management or control of the Trust. Accordingly, the Certificateholders do not have the right to authorize actions, appoint service providers or take other actions as may be taken by shareholders of other trusts or companies where shares carry such rights. The Certificateholders' limited voting rights give almost all control under the Amended Trust Agreement to the Manager and the Trustee. The Manager and the Trustee may take actions in the operation of the Trust that may be adverse to the interests of the Certificateholders and may adversely affect the value of the Trust Certificates.

The value of the Trust Certificates will be adversely affected if the Trust is required to indemnify the Trustee or the Manager under the Trust Documents. Under the Trust Documents, each of the Trustee and the Manager has a right to be indemnified by the Trust for certain liabilities or expenses that it incurs without gross negligence, bad faith or willful misconduct on its part. If the Trust is required to indemnify the Trustee or the Manager under the Trust Documents, it would reduce the value of the Trust Certificates.

Risk Relating to the Trustee, the Manager and Brokers

Certificateholders will have only limited rights against the Trustee, and the Trustee has limited liability to the Trust. The Amended Trust Agreement provides that the Trustee (and its affiliates, directors, officers, employees and representatives) and any officer, employee or agent of the Trust or its affiliates shall not incur any liability to the Trust or the Certificateholders for any act or omission thereunder unless the Trustee has acted with gross negligence, bad faith or willful misconduct. The Certificateholders will therefore have no recourse to such parties for actions taken or not taken for which they disagree with absent such gross negligence, bad faith or willful misconduct.

The Trust's success depends on the efforts of third-party managers and real estate brokers. The Trust has retained the Manager, who will be an independent third party, to perform asset management duties with respect to the Properties, and the Manager will retain third-party real estate brokers to sell the Properties. Any of these third-party service providers may terminate its relationship with the Trust at any time upon relatively short notice or no notice. In addition, the Certificateholders may disagree with the third parties chosen by the Manager but will not have the ability to change or remove such third parties other than pursuant to limited approval rights.

The Manager has a limited history of managing investment vehicles like the Trust and its experience may be inadequate or unsuitable to manage the Trust. Although the Manager has a history of property management, the past performances of the Manager in other investment vehicles is not an indication of its ability to manage an investment vehicle such as the Trust. If the experience of the Manager and its employees is inadequate or unsuitable to manage the Trust, the operations of the Trust may be adversely affected.

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The Trust may need to find and appoint a replacement Manager quickly, which could pose a challenge to the operations of the Trust. The Majority Certificateholders could decide to replace Hilco as the Manager. Transferring responsibilities to another party will likely be complex and could subject the Trust to the risk of loss during the transfer, which could have a negative impact on the value of the Trust Certificates or result in loss of the Trust' s assets. The Trustee and the Certificateholders may not be able to find a party willing to serve as the Manager under the same terms as the current Management Agreement. To the extent that the Trustee and the Certificateholders are not able to find a suitable party willing to serve as the Manager, or to the extent that doing so requires entering into a modified Management Agreement that is less favorable for the Trust, the value of the Trust Certificates could be adversely affected.

Risks Relating to Taxes

If the Trust is not treated as a liquidating trust for federal tax purposes, there may be adverse tax consequences to the Trust and the Certificateholders. Pursuant to the Amended Trust Agreement, the Trust was organized with the intention that it qualify as a liquidating trust under applicable federal income tax rules. A liquidating trust is treated as a grantor trust, which is a pass-through entity for federal income tax purposes. However, no legal opinions have been requested from counsel, and no rulings have been or will be requested from the Internal Revenue Service (the "IRS"), as to the tax treatment of the Trust. Accordingly, there can be no assurance that the IRS will not assert, and that a court would not conclude, that the Trust does not qualify as a liquidating trust. If the Trust does not qualify as a liquidating trust, it is intended that the Trust be treated as a partnership for U.S. federal income tax purposes (which would also be a pass-through entity for federal income tax purposes although the tax consequences of owning a partnership may differ from those of owning a grantor trust in some respects, possibly adversely); however, that treatment as a partnership is also not certain. Because a significant proportion of the Trust' s income is expected to be real property rents received from New JCP or an assignee or sub-lessee thereof, the Amended Trust Agreement includes restrictions on the transferability of Trust Certificates to Certificateholders that directly or indirectly own 4.9% or more of the Trust Certificates, which restrictions are intended to ensure that the Trust' s rental income is not treated as received from a lessee or sub-lessee that is treated as related to the Trust for purposes of the publicly traded partnership "qualifying income" rules. These restrictions are intended to preserve the status of the Trust' s rental income as "qualifying income" and thus, preserve the Trust' s status as a partnership for U.S. federal income tax purposes in the event that the Trust is not treated as a grantor trust. However, New JCP is permitted to transfer its rights and obligations under the Master Leases in a variety of situations and the Trust may be unable to control who becomes a lessee or sublessee thereunder. Accordingly, even if the Amended Trust Agreement' s transfer restrictions are complied with, they may not prevent some or all of the Trust' s rental income from being treated as related party rent for purposes of the publicly traded partnership rules, which could cause the Trust to fail to qualify as a partnership. If the Trust does not qualify as a liquidating trust and is not treated as a partnership for federal income tax purposes, there may be adverse federal income tax consequences, including taxation of the income of the Trust at the entity level, which could reduce the amount of cash available for distributions to the Certificateholders, and additional tax payable by the Certificateholders upon their receipt of distributions.

A Certificateholder's tax liability could exceed distributions. Given the intended treatment of the Trust as a liquidating trust treated as a grantor trust for federal income tax purposes, the Certificateholders will be subject to tax on their share of the Trust' s income, regardless of whether any distributions are made by the Trust. Therefore, for any particular year, taxable income recognized by a Certificateholder with respect to its Trust Certificates may exceed the amount of distributions, if any, that are made, in which case such Certificateholder would need to satisfy any tax liabilities arising from the ownership of Trust Certificates from such Certificateholder' s own funds.

Before purchasing Trust Certificates, investors are urged to engage in careful tax planning with a tax professional. The federal income tax treatment of the Trust Certificates is complex and may not be clear in all cases. Additionally, the federal income tax treatment of the Trust Certificates may vary depending on the

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investor' s particular facts and circumstances. Investors other than individual citizens or residents of the United States or United States corporations should consider the impact of their status on the tax treatment of such an investment.

Purchasers of Trust Certificates may be required to make special calculations to determine tax gain or loss on the sale of Trust Certificates. The owner of beneficial interests in a grantor trust (like a Trust Certificate) for most federal income tax purposes is treated as owning its proportionate share of the trust' s assets, incurring its proportionate share of the trust' s liabilities and earning its proportionate share of the income of the trust. The Trust does not expect to maintain a separate basis account for any subsequent purchaser of a Trust Certificate in an open market transaction. However, to the extent the Trust is treated as a grantor trust, such a subsequent purchaser may be treated as though such purchaser purchased the assets of the Trust deemed to have been owned by the selling Certificateholder by reason of owning Trust Certificates. The subsequent purchaser should have a fair market value tax basis in the acquired Trust Certificates equal to such purchaser' s purchase price of the Trust Certificates. However, the books and records of the Trust may not reflect this new basis. Upon the sale of assets by the Trust, such a subsequent purchaser may need to make special calculations to report correctly its share of gain or loss for federal income tax purposes. Investors are urged to consult with their tax advisors regarding the acquisition, ownership and disposition of Trust Certificates.

The ownership and disposition of Trust Certificates may give rise to adverse tax consequences for non-U.S. and certain tax-exempt Certificateholders. The Trust is expected to sell or otherwise dispose of its assets as quickly as commercially possible. Until individual assets are sold, such assets will generate rental income pursuant to the Master Leases. Such income will be allocated to the Certificateholders, and each Certificateholder should assume this income may be treated as income from the active conduct of a trade or business in the United States for federal income tax purposes. As a result, a non-U.S. Certificateholder that is not otherwise required to file federal income tax returns or pay federal income tax may be deemed engaged in such a U.S. trade or business and required to file a federal income tax return and pay federal income tax with respect to income (including income allocated to it by the Trust) that is connected to such trade or business. If the rental income is not treated as income from the active conduct of a U.S. trade or business, a non-US. Certificateholder generally would be subject to 30% gross basis withholding tax (or such lower rate specified by an applicable tax treaty) on distributions that are attributable to such rental income unless a special election is made to treat such rental income as income from a U.S. trade or business. In addition, gain arising in connection with the disposition of Properties is expected to be treated as gain from the disposition of a U.S. real property interest, subject to federal income tax for a non-U.S. Certificateholder. A withholding agent may withhold at the highest applicable rate on distributions to non-U.S. Certificateholders that are attributable to any such dispositions, and non-U.S. Certificateholders will be required to file federal income tax returns and pay federal income tax, to the extent not previously withheld, on their allocable share of any gain. A Certificateholder that is a non-U.S. corporation may be subject to a 30% branch profits tax (or such lower rate specified by an applicable tax treaty) of its effectively connected earnings and profits for each taxable year, as adjusted for certain taxes.

If a Certificateholder disposes of Trust Certificates, such disposition generally will be treated for federal income tax purposes as a disposition of an undivided interest in each of the underlying assets of the Trust. As such, unless the Trust Certificates are considered to be regularly traded on an established securities market for purposes of the Foreign Investment in Real Property Tax Act ("FIRPTA"), any amounts received on the disposition of the Trust Certificates that are attributable to a non-U.S. Certificateholder' s deemed disposition of a U.S. real property interest held by the Trust generally will be taxed on a net income basis in the manner described above. In addition, a buyer of Trust Certificates generally would be required to withhold 15% of the purchase price for such Trust Certificates to the extent the disposition of such Trust Certificates by the seller is attributable to the deemed disposition of underlying assets that constitute U.S. real property interests. If the Trust Certificates are considered to be regularly traded on an established securities market for purposes of FIRPTA, the disposition of the Trust Certificates generally would be subject to the rules under FIRPTA that govern publicly traded interests in publicly traded corporations. In such case, a non-U.S. Certificateholder that is not otherwise required to file federal income tax returns or pay federal income tax generally would only be subject to federal income tax under FIRPTA if such non-U.S. Certificateholder owned more than 5% of the Trust Certificates at any time

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during an applicable measuring period. It is not clear whether the Trust Certificates will be considered to be regularly traded on an established securities market for purposes of FIRPTA. These restrictions and the restrictions described below may make ownership and disposition of the Trust Certificates less attractive.

Certain tax-exempt Certificateholders may be subject to tax with respect to their share of the Trust' s income if such income is unrelated business taxable income ("UBTI"), including income treated as "debt financed" income. Tax-exempt Certificateholders are strongly encouraged to consult their own tax advisors regarding all aspects of UBTI.

The Certificateholders may be subject to state, local and Puerto Rican income taxes and may have to file tax returns in each jurisdiction where a Property is located. The Trust will own real property located in a significant number of U.S. states, as well as Puerto Rico. Many U.S. states, as well as Puerto Rico, impose income taxes on income earned with respect to real property located in such jurisdiction, including gain arising on the disposition of such property. States or localities (including Puerto Rico) that respect the pass-through nature of the Trust for tax purposes may require a Certificateholder to file a tax return and pay income tax in their jurisdiction. Because the Trust owns properties in 37 U.S. states, as well as Puerto Rico, this could result in the Certificateholders being required to file tax returns and paying taxes in a large number of jurisdictions.

Expenses incurred by the Trust may not be deductible by the Certificateholders. Expenses incurred by the Trust generally will be deemed to have been proportionately paid by each Certificateholder. As such, these expenses may not be deductible or may be subject to limitations on deductibility. Investors are urged to consult with their tax advisors regarding the acquisition, ownership and disposition of Trust Certificates.

Risks Relating to Accounting, Financial Reporting and Information Management

The historical and pro forma financial information included in this registration statement may not be a reliable indicator of future results. The financial statements and the pro forma financial information included herein may not reflect what the Trust' s business, financial position or results of operations will be in the future. The Properties were historically operated by J. C. Penney as part of its larger corporate organization and not as a stand-alone business. As a result, J. C. Penney' s unaudited financial statements as of and for the three and nine months ended October 31, 2020 as well as its audited financial statements as of February 1, 2020 and February 2, 2019 and for the fiscal years ended February 1, 2020, February 2, 2019 and February 3, 2018 incorporated by reference herein are not the financial results of the Trust and should not be relied upon as indicative of what the Trust' s financial condition, results of operations or cash flows will be in the future. In addition, the pro forma financial information included in this registration statement may not reflect what the Trust' s financial condition, results of operations or cash flows would have been had the Trust existed as a stand-alone business or independent entity during the periods presented. Significant differences exist between the Trust' s cost structure, financing and business operations as compared to those of J. C. Penney. Moreover, the pro forma financial information included in this registration statement was prepared on the basis of assumptions derived from available information that we believe to be reasonable. However, these assumptions may change or may be incorrect, and actual results may differ, perhaps significantly. Therefore, the financial information included in this registration statement may not necessarily be indicative of what the Trust' s financial condition, results of operations or cash flows will be in the future. For additional information about the basis of presentation of the financial information included in this registration statement, see "Item 2. Financial Information" and "Item 13. Financial Statements and Supplementary Data."

The Properties may be subject to impairment charges that may materially affect our financial results. Economic and other conditions may adversely impact the valuation of our assets, resulting in impairment charges that could have a material adverse effect on our results of operations and earnings. On a regular basis, we evaluate our assets for impairments based on various triggers, including changes in the projected cash flows of such assets and market conditions. If we determine that an impairment has occurred, then we would be required to make an adjustment to the net carrying value of the asset, which could have a material adverse effect on our

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results of operations in the accounting period in which the adjustment is made. Furthermore, changes in estimated future cash flows due to a change in our plans, policies or views of market and economic conditions could result in the recognition of additional impairment losses for already impaired assets, which, under the applicable accounting guidance, could be substantial.

If the Trust is unable to maintain effective internal control over financial reporting in the future, the accuracy and timeliness of its financial reporting may be adversely affected. If the Trust identifies one or more material weaknesses or significant deficiencies in the Trust' s internal control over financial reporting, the Trust may be required to disclose that its internal control over financial reporting is ineffective. Were this to occur, the Trust could lose investor confidence in the accuracy and completeness of its financial reports, which could have a material adverse effect on the Trust' s reputation and the value of the Trust Certificates.

Any decision on the part of the Trust, as an emerging growth company, to choose reduced disclosures applicable to emerging growth companies could make the Trust Certificates less attractive to investors. The Trust is an "emerging growth company," as defined in the Securities Act, and for so long as it continues to be an emerging growth company, it may choose to take advantage of certain exemptions from various reporting requirements applicable to other public companies, including the extended transition period for complying with new or revised financial accounting standards. See "Item 1. Business−Emerging Growth Company Status." As a result of our reduced reporting, investors may be unable to compare our business with other companies in our industry if they believe that our financial accounting is not as transparent or complete as other companies in our industry. No assurance can be given that this reduced reporting will not have an impact on the price of the Trust Certificates.

Information technology, data security breaches and other similar events could harm the Trust. The Trust and its service providers, including the Manager, rely on information technology and other computer resources to perform operational activities as well as to maintain the Trust' s business records and financial data. These computer systems are subject to damage or interruption from power outages, computer attacks by hackers, viruses, catastrophes, hardware and software failures and breach of data security protocols by its personnel or third-party service providers. Although the Trust has implemented administrative and technical controls and taken other actions to minimize the risk of cyber incidents and otherwise protect its information technology, computer intrusion efforts are becoming increasingly sophisticated and even the controls that the Trust has installed might be breached. Further, most of these computer resources are provided to the Trust or are maintained on behalf of the Trust by third-party service providers pursuant to agreements that specify certain security and service level standards, but which ultimately are outside of the Trust' s control. Additionally, security breaches of the Trust' s information technology systems could result in the misappropriation or unauthorized disclosure of proprietary, personal and confidential information, which could result in significant financial or reputational damages to the Trust.

Item 2. Financial Information

Management' s Discussion and Analysis of Financial Condition and Results of Operations

The following is a discussion and analysis of the anticipated financial condition of the Trust immediately following the PropCo Closing Date. As of the date of this registration statement, the Trust does not own, directly or indirectly, the Properties or any other assets and does not have any operations, and it is not expected to own any such assets or have any operations prior to the Properties Transfer on the PropCo Closing Date. In addition, the Properties did not have business activities or rental history with respect to third parties; rather such assets were owned or ground leased by J. C. Penney and used by J. C. Penney in its operations. Accordingly, the following does not include a discussion and analysis of the historical results of operations for the Trust or the Properties.

This following discussion contains forward-looking statements that involve risks and uncertainties. The Trust' s actual results could differ materially from those anticipated in these forward-looking statements as a

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result of various factors, including those which are discussed below and elsewhere in this registration statement. See "Cautionary Statement Regarding Forward-Looking Statements."

Overview

On December 21, 2020, the Trust was established in accordance with the Plan of Reorganization. On the PropCo Closing Date, among other things, J. C. Penney will transfer its fee or leasehold interest (as applicable) in the Properties to the PropCos and assign the Master Leases relating to the Properties to the Trust. As a result, the Trust will, indirectly through separate property holding companies (referred to in this registration statement as the PropCos), own 160 Retail Properties and six Warehouses, all of which will be leased to New JCP under the Master Leases.

The Trust' s future operations are expected to consist solely of, in each case through the PropCos, owning the Properties, leasing the Properties to New JCP under the Master Leases, and subject to market conditions, selling the Properties to third-party investors as promptly as practicable after the PropCo Closing Date. On the PropCo Closing Date, the Trust intends to retain the Manager, who will be an independent third party and will initially be Hilco, to perform asset management duties with respect to the Properties and one or more third-party real estate brokers to sell the Properties. Together with the proceeds from sales of the Properties, the Master Leases will account for all of the Trust' s revenues.

Results of Operations

Revenues. Following the PropCo Closing Date, the Trust' s earnings will primarily consist of rental payments by New JCP under the Master Leases and sales proceeds from the disposition of Properties. Under the Master Leases, base rent is initially expected to be $156.6 million per year ($121.2 million for the Retail Master Lease and $35.4 million for the DC Master Lease), subject to a rental abatement of 50% for the first year under the Retail Master Lease. Commencing on the third lease year, the base rent under each Master Lease is subject to annual adjustments as follows: (i) for the Retail Master Lease, the annual base rent will be adjusted, commencing on December 7, 2023 and continuing each following year during the term, by the per annum percentage increase (cumulative and compounded) in the consumer price index reported for the month of September immediately preceding the applicable base rent adjustment over the consumer price index reported for the month of September in the calendar year immediately preceding the year of such adjustment, subject to a 2% cap on any such annual increase for the Retail Master Lease, provided that such adjustment shall not decrease the then-applicable base rent and (ii) for the DC Master Lease, the annual base rent will be increased by 2% per annum (cumulative and compounded) for each lease year over the rent for immediately preceding lease year. With respect to both Master Leases, during each lease year during any renewal term, the base rent shall be an annual amount equal to the greater of (a) the base rent for the immediately preceding lease year (as adjusted by subtracting the base rent allocation amounts allocable to any terminated properties) and (b) the fair market rent for such renewal term, as determined in accordance with a valuation procedure set forth in the Master Leases.

Under the Master Leases, the Tenants will be required to make all expenditures reasonably necessary to maintain the premises in good appearance, repair and condition. Revenues from tenant reimbursement income will equal expenditures for which the Tenants reimburse the Trust pursuant to the terms of the Master Leases.

Expenses. General and administrative expenses are expected for items such as professional services, legal expenses, property management and leasing costs. The Trust is not expected to have any employees other than the Executive Officer and the Financial Officer (who are employees of the Manager provided to the Trust pursuant to the Management Agreement), and to the extent requested by the Trust, New JCP will provide the Trust with certain administrative and support services pursuant to the Transition Services Agreement. The fees charged to the Trust for the services furnished pursuant to such agreement will generally be determined on cost plus basis.

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The Master Leases are triple-net leases, meaning that New JCP will generally be required to pay all expenditures necessary to maintain the premises in good appearance, repair and condition, and will generally be required to pay all real estate taxes, ground rent, insurance premiums and other amounts attributable to the ownership and operation of the Properties. Accordingly, it is not anticipated that the Trust will be required to expend any material amounts for such expenditures, excluding the cost of any enhanced insurance coverage that the Trust may elect to obtain. See "Item 1. Business−Description of the Trust and the Trustee−Insurance" for additional information.

The Trust will incur depreciation expense related to the Properties. Depreciation expense will be determined based on the useful lives of the Properties.

Liquidity and Capital Resources

The Trust' s primary sources for meeting its capital requirements are its cash received from New JCP pursuant to the Master Leases and proceeds from the sale of the Properties. The Trust will also have initial cash on hand of $25.0 million.

The Trust' s primary uses of funds will be general and administrative costs, all of which the Trust expects to be able to adequately fund over the next 12 months from its primary sources of capital. Capital expenditures for the Properties will be the responsibility of New JCP as the tenant.

Critical Accounting Policies and Estimates

The preparation of our financial statements in conformity with GAAP requires that we make estimates and use assumptions that in some instances may materially affect amounts reported in the Combined Schedules of Investments of Real Estate Assets to be Acquired included in this registration statement in "Item 15. Financial Statements and Exhibits." In preparing these financial statements, we have made our best estimates and judgments based on historical experience and current trends that we believe are reasonable under the circumstances, as well as other factors that we believe are relevant at the time of the preparation of the Combined Schedules of Investments of Real Estate Assets to be Acquired. Actual results could differ from our assumptions and estimates. See Note 2 to the Combined Schedules of Investments of Real Estate Assets to be Acquired in "Item 15. Financial Statements and Exhibits" for a description of our significant accounting policies.

Long-Lived Assets. Land, buildings and improvements are stated at cost less accumulated depreciation. Additions and substantial improvements are capitalized and include expenditures that materially extend the useful lives of existing facilities. Maintenance and repairs that do not materially improve or extend the useful lives of the respective assets are expensed as incurred. Depreciation expense is recorded over the estimated useful lives of the respective assets using the straight-line method. The range of lives is generally between 10 and 50 years for buildings and improvements.

Impairment of Long-Lived Assets and Real Estate. We periodically assess whether there are any indicators that the value of our long-lived real estate and related intangible assets such as building and improvements or operating lease assets may be impaired or that their carrying value may not be recoverable. These impairment indicators include, but are not limited to, vacancies, an upcoming lease expiration, a tenant with credit difficulty, the termination of a lease by a tenant, significant underperformance relative to historical or projected future operating results or a likely disposition of the property.

For real estate assets held for investment and related intangible assets in which an impairment indicator is identified, we follow a two-step process to determine whether an asset is impaired and to determine the amount of the charge. First, we compare the carrying value of the property' s asset group to the estimated future net undiscounted cash flow that we expect the property' s asset group will generate, including any estimated proceeds from the eventual sale of the property' s asset group. The undiscounted cash flow analysis requires us to make our

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best estimate of market rents, residual values and holding periods. We estimate market rents and residual values using market information from outside sources such as third-party market research, external appraisals, broker quotes or recent comparable sales.

As the Trust' s objective is to sell the Properties as promptly as practicable after the PropCo Closing with the intent to complete the sale of all Properties within a short period of time, the holding periods used in the undiscounted cash flow analysis will reflect the short-term nature of the investment. Depending on the assumptions made and estimates used, the future cash flow projected in the evaluation of long-lived assets and associated intangible assets can vary within a range of outcomes. We consider the likelihood of possible outcomes in determining our estimate of future cash flows and, if warranted, we apply a probability-weighted method to the different possible scenarios. If the future net undiscounted cash flow of the property' s asset group is less than the carrying value, the carrying value of the property' s asset group is considered not recoverable. We then measure the impairment loss as the excess of the carrying value of the property' s asset group over its estimated fair value.

Assets Held for Sale. We generally classify real estate assets that are subject to operating leases or direct financing leases as held for sale when we have entered into a contract to sell the property, all material due diligence requirements have been satisfied, we received a non-refundable deposit, and we believe it is probable that the disposition will occur within one year. When we classify an asset as held for sale, we compare the asset' s fair value less estimated cost to sell to its carrying value, and if the fair value less estimated cost to sell is less than the property' s carrying value, we reduce the carrying value to the fair value less estimated cost to sell. We base the fair value on the contract and the estimated cost to sell on information provided by brokers and legal counsel. We then compare the asset' s fair value (less estimated cost to sell) to its carrying value, and if the fair value, less estimated cost to sell, is less than the property' s carrying value, we reduce the carrying value to the fair value, less estimated cost to sell. We will continue to review the property for subsequent changes in the fair value and may recognize an additional impairment charge, if warranted.

Quantitative and Qualitative Disclosures About Market Risk

The Trust does not expect to have any market risk exposure as defined by Item 305 of Regulation S-K promulgated by the SEC. In particular, the Amended Trust Agreement will not authorize the Trustee to borrow for payment of the Trust' s ordinary expenses, the Trust will not engage in transactions in foreign currencies which could expose the Trust or the Certificateholders to any foreign currency related market risk, the Trust will not invest in derivative financial instruments, and the Trust has no foreign operations or long-term debt instruments.

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Item 3. Properties

At the PropCo Closing Date, the Trust owned six Warehouses and 160 Retail Properties across 37 U.S. states and Puerto Rico. In the aggregate, the Warehouses and Retail Properties comprise 10.1 million square feet and 21.7 million square feet, respectively, of leasable space, all of which is leased to the Tenants under the Master Leases. See "Item 1. Business–Description of the Trust Documents–Master Leases" for additional information regarding the Master Leases. The following tables summarizes certain features of the owned and ground-leased properties that comprise the Properties:

Warehouses

Location	Square Feet	Owned Acreage	Annual Rent	Annual Rent (% of Total)
Reno, NV	1,838,800	200.8	$8,734,300	24.7 %
Forest Park (Atlanta), GA	2,233,475	107.2	$7,817,163	22.1 %
Columbus, OH	2,000,000	120.1	$6,500,000	18.4 %
Lenexa, KS	2,308,100	150.7	$6,294,059	17.8 %
Haslet, TX	1,133,027	67.3	$4,248,851	12.0 %
Statesville, NC	595,209	32.0	$1,785,627	5.0 %
Total Warehouses	**10,108,611**	**678.2**	**$35,380,000**	**100.0 %**

Retail Properties

State	# of Properties			Square Feet	Annual Rent	Annual Rent (% of Total)
	Fee Owned	Ground Lease	Total			
CA	22	6	28	4,433,580	$24,302,383	20.0 %
TX	26	4	30	3,269,745	$21,297,084	17.6 %
FL	8	1	9	1,292,316	$9,874,971	8.1 %
WA	3	1	4	666,272	$4,515,948	3.7 %
IL	5	0	5	845,224	$4,414,248	3.6 %
NV	2	1	3	437,937	$3,941,433	3.3 %
AZ	5	0	5	651,164	$3,848,169	3.2 %
MI	6	0	6	863,012	$3,699,717	3.1 %
NJ	5	0	5	882,946	$3,510,571	2.9 %
OH	5	0	5	645,447	$3,504,477	2.9 %
VA	5	0	5	736,563	$3,330,898	2.7 %
PA	4	0	4	555,087	$2,984,042	2.5 %
NY	2	2	4	673,802	$2,830,244	2.3 %
MD	4	0	4	559,312	$2,424,176	2.0 %
NM	2	0	2	265,910	$2,014,848	1.7 %
Other	33	8	41	4,933,630	$24,734,170	20.4 %
Total Retail	**137**	**23**	**160**	**21,711,947**	**$121,227,377**	**100.0 %**

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Landlord Retail Option Properties

Under the Retail Master Lease, the Trust has several independent options, exercisable from time to time, to terminate the Retail Master Lease as to any one or more of the 23 Landlord Retail Option Properties. See "Item 1. Business−Description of the Trust Documents−Master Leases−Landlord Option Properties" for additional information. The following table summarizes certain features of the owned and ground-leased properties that comprise the Landlord Retail Option Properties:

Store Name	Location	Ownership Type	Annual Rent	Annual Rent (% of Total Retail Properties)	
Springfield Town Center	Springfield, VA	Fee	$1,234,632	1.0	%
Queens Center	Elmhurst, NY	Fee	$1,226,040	1.0	%
Westfield Culver City	Culver City, CA	Fee	$1,222,992	1.0	%
SouthBay Pavilion at Carson	Carson, CA	Fee	$1,204,182	1.0	%
Stonebriar Centre	Frisco, TX	Fee	$982,800	0.8	%
Fashion Valley	San Diego, CA	Ground Lease	$941,007	0.8	%
Barton Creek Square	Austin, TX	Fee	$864,774	0.7	%
Memorial City S/C	Houston, TX	Fee	$842,916	0.7	%
Westfield Annapolis	Annapolis, MD	Fee	$760,392	0.6	%
Westfield Santa Anita	Arcadia, CA	Ground Lease	$715,971	0.6	%
Newport Centre	Jersey City, NJ	Fee	$648,655	0.5	%
Twelve Oaks Mall	Novi, MI	Fee	$545,325	0.4	%
Westminster Mall	Westminster, CA	Ground Lease	$533,985	0.4	%
The Woodlands Mall	The Woodlands, TX	Fee	$511,000	0.4	%
The Shops at Tanforan	San Bruno, CA	Fee	$446,464	0.4	%
Fair Oaks Mall	Fairfax, VA	Fee	$386,844	0.3	%
Pheasant Lane Mall	Nashua, NH	Fee	$366,926	0.3	%
Stoneridge S/C	Pleasanton, CA	Fee	$311,838	0.3	%
Park Meadows	Lone Tree, CO	Fee	$302,586	0.2	%
Freehold Raceway Mall	Freehold, NJ	Fee	$299,216	0.2	%
The Oaks	Thousand Oaks, CA	Fee	$289,918	0.2	%
Danbury Fair	Danbury, CT	Fee	$272,750	0.2	%
Gateway Shopping Center I & II	Brooklyn, NY	Ground Lease	$247,884	0.2	%
Total Landlord Retail Option Properties			**$15,159,095**	**12.5**	**%**

Item 4. Security Ownership of Certain Beneficial Owners and Management

As of the PropCo Closing Date, we expect to have [ ] million Trust Certificates issued and outstanding. The following table sets forth estimated information regarding the beneficial ownership of the Trust Certificates immediately following the PropCo Formation Transactions with respect to for each Certificateholder that is a beneficial owner of more than 5% of the Trust Certificates immediately following the consummation of the PropCo Formation Transactions. The Trust will not have directors. The Executive Officer and the Financial Officer of the Trust do not and are not permitted to, directly or indirectly, own any of the Trust Certificates.

Beneficial ownership of the Trust Certificates is determined under rules of the SEC and generally includes any Trust Certificates over which a person exercises sole or shared voting or investment power. Except as noted by footnote, and subject to community property laws where applicable, we believe based on the information provided to us that the persons named in the table below have sole voting and investment power with respect to all Trust Certificates shown as beneficially owned by them.

Name of Beneficial Owner	Number of Trust Certificates Owned	Percentage of Trust Certificates Owned

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Item 5. Directors and Executive Officers

The Trust does not currently have, and will not have, directors.

Below is a list of names, ages and a brief account of the business experience as of December 1, 2020 of our executive officers.

Name	Age	Position
Neil Aaronson	47	Chief Executive Officer
Larry Finger	67	Chief Financial Officer

Neil Aaronson, Chief Executive Officer. Mr. Aaronson will be appointed as our chief executive officer on the PropCo Closing Date. Mr. Aaronson currently serves as CEO of Hilco Real Estate LLC, an affiliate of the Manager. He has served in that role since 2008. Previously, Mr. Aaronson served as the Executive Vice President of Hilco Global from 2006 to 2008. Prior to joining Hilco Global, Mr. Aaronson served as Senior Vice President of Business Development for Cendant Corporation from 2003 to 2006, where he oversaw deal-making for the company' s hotel and timeshare businesses and as Vice President of Cendant' s Strategic Development Group from 2000 to 2003. Earlier, he served as an associate investment banker with ING Barings, where he handled the analysis and negotiations of acquisitions, divestitures and financings for several public and private companies. Mr. Aaronson brings extensive experience in all aspects of retail, restaurant, industrial, hospitality, office and medical office real estate to the role. Mr. Aaronson received a Bachelor of Economics degree from the Wharton School of the University of Pennsylvania and a Juris Doctor degree from the University of Pennsylvania Law School.

Larry Finger, Chief Financial Officer. Mr. Finger will be appointed as our chief financial officer on the PropCo Closing Date. Mr. Finger has been a full-time consultant with Hilco Real Estate LLC since April 2020. Prior to joining Hilco Real Estate LLC, Mr. Finger served as president of Strategic Advisory, Inc., an advisory services company specializing in improving public REIT valuations with a particular focus on the retail sector, from 2008 to April 2020. Prior to forming Strategic Advisory, Inc., Mr. Finger served as chief financial officer of Federal Realty Investment Trust from 2002 until 2007. During his tenure at Federal Realty Investment Trust, Mr. Finger also served as executive vice president from 2005 until 2007 and as senior vice president from 2002 until 2005. From 1993 until 2001, Mr. Finger served as chief financial officer of Washington Real Estate Investment Trust. From 1978 until 1991, Mr. Finger served in various senior management positions, including chief operating officer of Savage/Fogarty Companies, Inc., a Dutch-owned real estate development company. Mr. Finger served as a member of the Board of Directors of American Assets Trust (NYSE: AAT) from the completion of its initial public offering in 2011 through June 2019, and during that period, he also served as chairperson of the Audit Committee and a member of the Compensation Committee. Mr. Finger received his Juris Doctor degree from Georgetown University Law Center and his Bachelor of Science degree in accountancy from the University of Illinois. Mr. Finger was licensed as a Certified Public Accountant in Maryland in 1976 and was admitted to the District of Columbia Bar in 1981.

Item 6. Executive Compensation

Pursuant to the terms of the Management Agreement, the Manager will provide a management team, along with appropriate support personnel, to provide the management services to be provided by the Manager to the Trust, including individuals who shall serve as the Executive Officer and Financial Officer of the Trust, to provide the management services thereunder.

The Trust will enter into the Management Agreement on the PropCo Closing Date and will not conduct operations until such date. Therefore, we have not yet paid any compensation to the individuals who will become our executive officers. Such compensation will ultimately be paid pursuant to the terms of the Management Agreement. See "Item 1. Business— Description of the Trust Documents-- Management Agreement" for additional details.

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Item 7. Certain Relationships and Related Transactions and Director Independence

Registration Rights Agreement

The Trust expects to enter into a registration rights and resale cooperation agreement (the "Registration Rights Agreement") providing for, among other things, (i) a resale registration statement at the request of Certificateholders holding, together with their affiliates, in excess of 10% of the outstanding Trust Certificates that have determined that they may not be able to freely transfer their Trust Certificates pursuant to Section 1145 of the Bankruptcy Code, (ii) customary "piggy-back rights" for all Certificateholders, and (iii) cooperation assistance for sales of the Trust Certificates pursuant to an exemption from the registration requirements of the Securities Act. It is expected that at least some of the Certificateholders will be a related person following the PropCo Closing Date.

Other than the Registration Rights Agreement, there is not currently proposed any transaction or series of similar transactions following the PropCo Closing Date to which the Trust will be a party in which the amount involved exceeded or will exceed $120,000 and in which any related person had or will have a direct or indirect material interest.

Director Independence

The Trust will not have any directors.

Item 8. Legal Proceedings

From time to time, the Trust may be party to various legal actions and administrative proceedings and subject to various claims arising in the ordinary course of business. Pursuant to the Plan of Reorganization, any liability arising from, or relating to, legal proceedings involving the businesses and operations located at the Properties prior to the PropCo Closing Date will be retained by J. C. Penney.

Item 9. Market Price of and Dividends on the Registrant' s Common Equity and Related Stockholder Matters

Market Information and Holders

There is currently no established public market for the Trust Certificates.

On the PropCo Closing Date, there will be approximately 250 Certificateholders that in the aggregate will hold [ ] million Trust Certificates.

Trust Certificates Eligible for Future Sale

Pursuant to Section 1145 of the Bankruptcy Code, except as noted below, the offering, issuance and distribution of the Trust Certificates pursuant to the Plan of Reorganization is exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution or sale of securities. The Trust Certificates issued in reliance on Section 1145 of the Bankruptcy Code will not be "restricted securities," as defined in Rule 144(a)(3) under the Securities Act, and will be freely tradable and transferable by any initial recipient thereof that (i) is not an "affiliate" of the Debtors or the Trust, as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an "affiliate" within 90 days of such transfer, and (iii) is not an entity that is an "underwriter," as defined in Section 1145(b) of the Bankruptcy Code.

Section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as any person who:

> purchases a claim against, an interest in, or a claim for an administrative expense against the debtor, if that purchase is with a view to distributing any security received in exchange for such a claim or interest;

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offers to sell securities offered under a plan of reorganization for the holders of those securities;

offers to buy those securities from the holders of the securities, if the offer to buy is (a) with a view to distributing those securities; and (b) under an agreement made in connection with the plan of reorganization, the completion of the plan of reorganization, or with the offer or sale of securities under the plan of reorganization; or

is an issuer with respect to the securities, as the term "issuer" is defined in section 2(a)(11) of the Securities Act.

To the extent that persons who received Trust Certificates issued under the Plan of Reorganization that are exempt from registration under the Securities Act or other applicable law by Section 1145 of the Bankruptcy Code are deemed to be "underwriters," resales by those persons would not be exempted from registration under the Securities Act or other applicable law by Section 1145 of the Bankruptcy Code and may only be sold pursuant to a registration statement or pursuant to exemption therefrom, such as the exemption provided by Rule 144 under the Securities Act. We have agreed to register such Trust Certificates for resale pursuant to the Registration Rights Agreement. See "Item 7. Certain Relationships and Related Transactions−Registration Rights Agreement."

Whether or not any particular person would be deemed an "underwriter" with respect to the Trust Certificates received pursuant to the Plan of Reorganization would depend upon various facts and circumstances applicable to that person. Accordingly, we express no view as to whether any particular person that will receive the Trust Certificates pursuant to the Plan of Reorganization will be deemed an "underwriter" with respect to such Trust Certificates. As a result, we cannot estimate the number of Trust Certificates that may be sold under Rule 144(a) of the Securities Act. The Trust has not agreed to issue any additional Trust Certificates in the future.

Dividend Policy

Commencing on [ ], 2021, the Trust will distribute on a monthly basis the proceeds from lease payments under the Master Leases (until such time as all of the Properties have been sold) and all sales proceeds from the disposition of Properties, in each case pro rata, to the Certificateholders as of the record date immediately preceding the applicable distribution date. Such distributions shall be net of tax payments to be made by the Trust, fees and expenses of the Trustee, the Manager and any other professional advisors, and funds to be set aside for the Trustee' s and Manager' s reserve accounts.

Item 10. Recent Sales of Unregistered Securities

On the PropCo Closing Date, pursuant to the Plan of Reorganization, the Trust expects to issue and distribute [ ] million Trust Certificates to certain lenders of the Debtors. Pursuant to Section 1145 of the Bankruptcy Code, the offering, issuance and distribution of the Trust Certificates as contemplated by the Plan of Reorganization is exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution or sale of securities.

Item 11. Description of Registrant' s Securities to be Registered

Trust Certificates

The Amended Trust Agreement creates a series of equity trust certificates designated as "Copper Property CTL Pass Through Certificates." [ ] million Trust Certificates of such series will be issued on the PropCo Closing Date. Each Trust Certificate represents a fractional undivided beneficial interest in the Trust created thereby and represents Certificateholders' interests in the Trust. All Trust Certificates shall vote as a single class and shall be in all respects equally and ratably entitled to the benefits of the Amended Trust

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Agreement without preference, priority or distinction on account of the actual time or times of authentication and delivery, all in accordance with the terms and provisions of the Amended Trust Agreement. The Trust Certificates shall be the only instruments evidencing a fractional undivided interest in the Trust. The Trust Certificates do not represent indebtedness of the Trust. The Trust Certificates will not be repurchased by the Trust, and no additional certificates will be issued by the Trust.

The issuance of the Trust Certificates under the Plan of Reorganization is expected to be exempt pursuant to Section 1145 of the Bankruptcy Code. Thus, the Trust Certificates (i) would not be "restricted securities," as defined in Rule 144(a)(3) under the Securities Act and (ii) would be freely tradable and transferable by any initial recipient thereof that (i) is not an "affiliate" of the Debtors or the Trust, as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an "affiliate" within 90 days of such transfer, and (iii) is not an entity that is an "underwriter," as defined in subsection (b) of Section 1145 of the Bankruptcy Code.

Owners of 4.9% or more of the Trust Certificates are required to deliver a certification to the Trustee, as described in the Amended Trust Agreement, that such person (i) either (a) does not own, and will not own, actually or constructively, any stock, partnership or member interest or other equity or beneficial interest in (or, as applicable, in the assets or net profits of) (any such interest, a "Relevant Equity Interest") in any Tenant listed on Schedule III of the Amended Trust Agreement as of the date of such certification or (b) does not own, and will not own, actually or constructively, a Relevant Equity Interest in any Tenant listed on Schedule III as of the date of such certification in excess of the specified percentage of the aggregate outstanding Relevant Equity Interests in such Tenant to which the Trustee has consented; and (ii) agrees to provide in a timely manner any information as the Trustee may request in order to determine the accuracy of such certification or the effect, if any, that such person' s ownership of Trust Certificates would have on the Trust' s status as a partnership for U.S. federal income tax purposes under Sections 7704(c)(1) and (2) of the Code if the Trust were recharacterized as a "business entity" (rather than a grantor trust) for U.S. federal income tax purposes. A Certificateholder that has delivered such a certification is referred to as an "Excepted Holder."

The Trust Certificates are not, and will not be, listed on a national securities exchange; however, the Trust intends to take actions to cause the Trust Certificates to be quoted on a market operated by OTC Markets Group. See "Item 1A. Risk Factors‑‑Risks Relating to the Trust Certificates‑‑There is no currently established trading market for the Trust Certificates, which could limit liquidity, and it may be difficult to establish a price per Trust Certificate."

Interest in Assets

Beneficial interests in the Trust do not entitle any Certificateholder to any title in, or to any of the assets of, the Trust. Without limitation, the Certificateholders have no right with respect to, or interest in, cash, cash equivalents, any real properties or the net proceeds from sales of real properties.

Sum Certain

Beneficial interests in the Trust do not represent an obligation of any person to pay a sum certain amount.

Voting

Under the Amended Trust Agreement, all Trust Certificates shall vote as a single class and shall be in all respects equally and ratably entitled to the benefits of the Amended Trust Agreement without preference, priority or distinction on account of the actual time or times of authentication and delivery, all in accordance with the terms and provisions of the Amended Trust Agreement. The Trust Certificates shall be the only instruments evidencing a fractional undivided interest in the Trust.

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Approval Rights

Under the Amended Trust Agreement, the approval rights of the Certificateholders are limited to the following: (i) approval of the incurrence of indebtedness in excess of $5,000,000; (ii) approval of sales of Properties at prices below certain thresholds; (iii) approval of sales of properties beyond the targeted sales period; (iv) approving the engagement of any Financial Advisor or Leasing Agent (each as defined in the Amended Trust Agreement); (v) increasing the size of, or the duration for holding, Post-Closing Reserves (as defined in the Amended Trust Agreement); (vi) increasing the Reserve Amount (as defined in the Amended Trust Agreement); and (vii) the engagement of a new Trustee or Manager.

Distributions

The Trust Certificates represent a right to receive a pro rata portion of distributions by the Trust pursuant to the terms of the Amended Trust Agreement. Prior to distributions to Certificateholders, the Trust will make distributions in respect of certain tax payments to be made by the Trust, fees and expenses of the Trustee, the Manager and any other professional advisors, and funds to be set aside for the Trustee' s and Manager' s reserve accounts.

Certification and Transfer Restrictions

The Trust Certificates shall be evidenced by book-entry form represented by one or more global certificates registered in the name of DTC, as depository, or Cede & Co., its nominee, for so long as DTC is willing to act in that capacity.

Currently, the transfer agent of the Trust is GLAS Trust Company LLC. The transfer agent may be contacted by phone for customer service between the hours of 8:30 a.m. and 5:30 p.m. EST, Monday through Friday, at (201) 839-2200 and may be contacted via e-mail at ClientServices.Americas@glas.agency. Written correspondence to the transfer agent may be directed to GLAS Trust Company LLC, 3 Second Street, Suite 206, Jersey City, New Jersey 07311.

The Trust Certificates are subject to certain restrictions on transfer under the Amended Trust Agreement (in addition to those which may apply to certain Certificateholders who have determined they are statutory underwriters as described above). The Trust is intended to be treated as a grantor trust, and not a business entity, for U.S. federal income tax purposes. However, no ruling or opinion of counsel has been given regarding the Trust' s tax status. In the event the Trust is treated as a business entity rather than a grantor trust, it would be treated as a partnership for U.S. federal income tax purposes unless it is treated as a publicly traded partnership taxable as a corporation. To mitigate the likelihood that the Trust is treated as a corporation for tax purposes, the Trust Certificates are subject to certain restrictions on transfer, as summarized in the following paragraph, for the purpose of allowing the Trust to satisfy the "qualifying income" requirements of Sections 7704(c)(1) and (2) of the Code. Certificateholders should carefully review the transfer restrictions in their entirety, which are set forth in Section 4.05 of the Amended Trust Agreement.

No person may (i) actually or constructively own 4.9% or more of the Trust Certificates unless such person is an Excepted Holder or (ii) actually or constructively own any Trust Certificates that would cause the Trust to own in the aggregate (a) in the case of any tenant or sub-tenant listed on Schedule III of the Amended Trust Agreement (as of the date ownership of such Trust Certificate was obtained) that is a corporation for U.S. federal income tax purposes, stock of such tenant or sub-tenant possessing 10% or more of the total combined voting power of all classes of stock entitled to vote or 10% or more of the total value of shares of all classes of stock of such tenant or sub-tenant within the meaning of Section 856(d)(2)(B)(i) of the Code; or (b) in the case of any tenant or sub-tenant listed on Schedule III of the Amended Trust Agreement (as of the date ownership of such Trust Certificate was obtained) that is not a corporation for U.S. federal income tax purposes, an interest of 10% or more in the assets or net profits of such tenant or sub-tenant within the meaning of Section 856(d)(2)(B)(ii) of

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the Code. Any person who attempts to own a Trust Certificate that would result in a violation of either (i) or (ii) above must notify the Trustee in writing as promptly as practicable. Any transfer in violation of either (i) or (ii) above shall be void ab initio. If the restrictions in this paragraph are violated, the relevant Trust Certificate will be transferred automatically and by operation of law to a charitable trust and shall be designated as a "Designated Trust Interest" under the Amended Trust Agreement.

The transfer restrictions described above may have the effect of delaying, deferring or preventing a change in control of the Trust.

Other Rights and Restrictions

Certificateholders do not have preemptive rights or liquidation rights, and they have no right to convert their Trust Certificates into any other securities. Certificateholders are not liable for the liabilities and obligations of the Trust by reason of holding Trust Certificates. The Trust Certificates are not subject to redemption by the Trust.

The Trustee may resign at any time as Trustee of the Trust by giving 30 days' prior written notice thereof to the Certificateholders and the Manager. The Trustee may be removed at any time and for any reason as Trustee of the Trust by direction of the Majority Certificateholders.

Item 12. Indemnification of Directors and Officers

Under New York law, the Trust has the power to indemnify and hold harmless any person from and against any and all claims and demands whatsoever, subject to such standards and restrictions, if any, as are set forth in its governing instrument. The Trust is governed by the Amended Trust Agreement, which states that the Trustee and each of its agents, assigns, attorneys, directors, employees, executors, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives and successors (each, a "Trustee Indemnified Party") will be indemnified for, and defended and held harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense, including the reasonable fees and expenses of their respective professionals (collectively, "Damages") incurred without gross negligence, willful misconduct or bad faith on the part of the applicable Trustee Indemnified Party (which gross negligence, willful misconduct or bad faith, if any, must be determined by a final, non-appealable order of a court of competent jurisdiction) for any action taken, suffered or omitted to be taken by the Trustee Indemnified Parties in connection with the acceptance, administration, exercise and performance of their duties under the Amended Trust Agreement. An act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence or willful misconduct.

In addition, the Amended Trust Agreement provides that, to the fullest extent permitted by law, each Trustee Indemnified Party shall be indemnified for, and defended and held harmless against, any and all Damages arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Trust if the applicable Trustee Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Trust or its Certificateholders.

The Amended Trust Agreement also requires the Manager to obtain all reasonable insurance coverage for the Trustee. The cost of any such insurance coverage will be an expense of the Trust.

Item 13. Financial Statements and Supplementary Data

See "Item 15. Financial Statements and Exhibits."

The historical audited and unaudited financial statements of J. C. Penney, as the owner of the retail and operating assets sold to New JCP (the Trust' s significant lessee upon consummation of the PropCo Formation

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Transactions) have been filed with the SEC. J. C. Penney files annual, quarterly and current reports and other information with the SEC, which are available to the public at the SEC' s web site at www.sec.gov. J. C. Penney' s unaudited financial statements as of and for the three and nine months ended October 31, 2020, which are included in J. C. Penney' s Quarterly Report on Form 10-Q for the quarterly period ended October 31, 2020, filed with the SEC on December 10, 2020, as well as its audited financial statements as of February 1, 2020 and February 2, 2019 and for the fiscal years ended February 1, 2020, February 2, 2019 and February 3, 2018, which are included in J. C. Penney' s Annual Report on Form 10-K for the fiscal year ended February 1, 2020, filed with the SEC on March 20, 2020, are incorporated by reference herein.

Item 14. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Item 15. Financial Statements and Exhibits

(a) The following financial statements are being filed as part of this registration statement:

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Basis of Pro Forma Presentation

The Trust is a newly formed grantor trust that was formed pursuant to the Initial Trust Agreement as a New York common law trust on December 21, 2020.

On December 21, 2020, to establish the Trust as provided in the Plan of Reorganization, J. C. Penney Corporation, Inc. entered into the Initial Trust Agreement with GLAS Trust Company LLC, as trustee. Pursuant to the Plan of Reorganization, the following transactions (which are referred to in this registration statement collectively as the PropCo Formation Transactions), among others, are expected to occur:

i. the JCP Sellers will transfer their fee or leasehold interest (as applicable) in the Properties to the PropCos (which transfer is referred to in this registration statement as the Properties Transfer);

ii. the Initial Trust Agreement will be amended and restated to be between Copper BidCo LLC, an entity controlled by certain of the Debtors' lenders (replacing J. C. Penney Corporation, Inc.), and GLAS Trust Company LLC, continuing as trustee;

iii. J. C. Penney will assign to the Trust the Master Leases and the Transition Services Agreement with New JCP; and

iv. the Trust Certificates, which in the aggregate represent 100% of the beneficial interests in the Trust, will be issued to certain of the Debtors' lenders pursuant to the Plan of Reorganization and Section 1145 of the Bankruptcy Code in final satisfaction of such lenders' claims against the Debtors.

The Properties Transfer will occur immediately prior to the transactions described in clauses (ii) through (iv) above. The date on which the PropCo Formation Transactions occur is referred to in this registration statement as the PropCo Closing Date. As of the date of this registration statement, the Trust does not own, directly or indirectly, the Properties or any other assets, and it is not expected to own any such assets prior to the Properties Transfer. Also prior to the PropCo Closing Date, the Trust will have no liabilities.

The Trust' s future operations are expected to consist solely of, in each case through the PropCos, owning the Properties, leasing the Properties to New JCP, and subject to market conditions set forth in the Amended Trust Agreement, selling the Properties from time to time to third-party purchasers as promptly as practicable after the PropCo Closing Date. On or about the PropCo Closing Date, the Trust intends to retain the Manager, who is an independent third-party unrelated to J. C. Penney or New JCP, to perform asset management duties with respect to the Properties and one or more third-party real estate brokers to sell the Properties. Together with the proceeds from sales of the Properties, the Master Leases will account for all of the Trust' s revenues.

The following Unaudited Pro Forma Consolidated Statements of Operations of the Trust for the nine months ended September 30, 2020 and for the twelve months ended December 31, 2019 are presented as if the PropCo Formation Transactions and the other adjustments described in the Notes to Unaudited Pro Forma Consolidated Financial Statements had occurred on January 1, 2019. The following Unaudited Pro Forma Consolidated Balance Sheet of the Trust as of September 30, 2020 is presented as if the PropCo Formation Transactions and the other adjustments described in the Notes to Unaudited Pro Forma Consolidated Financial Statements had occurred on September 30, 2020.

The following unaudited pro forma consolidated financial statements are presented based on information currently available, are intended for informational purposes only, and do not purport to represent what the Trust' s financial position and results of operations actually would have been had the PropCo Formation Transactions and the other adjustments described in the Notes to Unaudited Pro Forma Consolidated Financial Statements occurred on the dates indicated, or to project the Trust' s financial performance for any future period.

The unaudited pro forma consolidated financial statements and the accompanying notes should be read in conjunction with the Combined Schedules of Investments of Real Estate Assets to be Acquired and accompanying notes included elsewhere in this registration statement.

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The Pro Forma column in the Unaudited Pro Forma Consolidated Statements of Operations reflect pro forma adjustments, which are further described in the accompanying Notes to Unaudited Pro Forma Consolidated Financial Statements. Because there are no historical operations for the Trust, only the resulting pro forma values are presented. The Pro Forma Adjustments column in the Unaudited Pro Forma Consolidated Balance Sheet reflects pro forma adjustments from the historical balance sheet balances presented in the Combined Schedules of Investments of Real Estate Assets to be Acquired included elsewhere in this registration statement.

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Copper Property CTL Pass Through Trust
Unaudited Pro Forma Consolidated Balance Sheet
As of September 30, 2020

(in thousands)	Historical (a)	Pro Forma Adjustments		Pro Forma Copper Property CTL Pass Through Trust
ASSETS				
Investment in real estate assets:				
Land	$112,663	$	(b)	$
Buildings and improvements, less accumulated depreciation	985,842		(b)	
Land, buildings and improvements, net	1,098,505		(b)	
Construction in progress	406		(b)	
Total investment in real estate, net	1,098,911		(b)	
Cash and cash equivalents	–		(c)	
Rent and tenant receivables	–	–	(d)	–
Operating lease assets	26,376		(e)	
In-place lease intangibles	–		(f)	
Favorable lease intangibles	–		(g)	
TOTAL ASSETS	$1,125,287	$		$
LIABILITIES				
Operating lease liabilities	$31,482	$	(e)	$
Accounts payable and accrued expenses	–		(h)	
Deferred developer credits	21,313	(21,313)	(i)	–
Unfavorable lease intangibles	–		(g)	
Other liabilities	912			
Total liabilities	$53,707	$		$
EQUITY				
Trust Certificates, no par value	$–	$		$
Additional paid-in capital	–			
Retained earnings	–			
Total equity	–			
TOTAL LIABILITIES AND EQUITY	$–	$		$

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Copper Property CTL Pass Through Trust
Unaudited Pro Forma Consolidated Statement of Operations
Nine Months Ended September 30, 2020

(in thousands, except for per Trust Certificate amounts)	Pro Forma	
Revenues:		
Rental income	$	(aa)
Total revenues		
Expenses:		
General and administrative expenses		(bb)
Property operating expenses		(cc)
Depreciation and amortization		(dd)
Total operating expenses		
Operating income		
Net income (loss)	$	
TRUST CERTIFICATES		
Weighted average number of Trust Certificates		
Basic		(ee)
Diluted		(ee)
Basic income (loss) per Trust Certificate	$	(ee)
Diluted income (loss) per Trust Certificate	$	(ee)

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Copper Property CTL Pass Through Trust
Unaudited Pro Forma Consolidated Statement of Operations
For the Year Ended December 31, 2019

(in thousands, except for per Trust Certificate amounts)	Pro Forma	
Revenues:		
Rental income	$	(aa)
Total revenues		
Expenses:		
General and administrative expenses		(bb)
Property operating expenses		(cc)
Depreciation and amortization		(dd)
Total operating expenses		
Operating income		
Net income (loss)	$	
TRUST CERTIFICATES		
Weighted average number of Trust Certificates		
Basic		(ee)
Diluted		(ee)
Basic income (loss) per Trust Certificate	$	(ee)
Diluted income (loss) per Trust Certificate	$	(ee)

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Copper Property CTL Pass Through Trust
Notes to Unaudited Pro Forma Consolidated Financial Statements

1. Adjustments to the Pro Forma Consolidated Balance Sheet

a. Represents J. C. Penney' s historical cost basis of the Properties to be transferred to the newly formed Trust, which will be the ultimate parent entity upon the completion of the PropCo Formation Transactions. The Trust is anticipated to be the reporting entity under the Exchange Act. The Trust has not had any operating activity since its formation on December 21, 2020. Accordingly, under GAAP, we will consolidate the assets, liabilities and results of operations of the Trust and its subsidiaries.

b. Represents the adjustment to fair value of the Properties upon the completion of the PropCo Formation Transactions, based on application of "fresh start" reporting in accordance with Financial Accounting Standards Board Accounting Standards Codification 852, *Reorganizations* ("Fresh Start Accounting"), reflecting the change in the financial reporting basis of assets. Land has an indefinite useful life and is not depreciated. Buildings and improvements generally have a remaining useful life of [ ] years.

c. Represents the adjustment to cash and cash equivalents for cash to be contributed to the Trust on the PropCo Closing Date.

d. Represents tenant receivables. In accordance with the Master Leases, the annual base rent for each lease year shall be payable in equal one-twelfth monthly installments in advance on the first business day of each calendar month during the lease year. As a result, no amount is estimated as of September 30, 2020.

e. Represents lease liability and right-of-use assets for ground leases transferred as part of the PropCo Formation Transactions. In accordance with Fresh Start Accounting, the Trust determined the lease classification to be an operating lease and will recognize a lease liability and right-of-use asset. The lease liability is measured as the present value of unpaid lease payments measured based on the reasonably certain lease term and corresponding discount rate. The right-of-use asset as determined in accordance with Fresh Start Accounting is measured as the lease liability as adjusted for any off-market rental terms at the acquisition date (the PropCo Closing Date) based on a preliminary purchase price allocation.

f. Represents the fair value of identified intangible assets related to in-place leases where we are the lessor and have acquired an owned property with an existing tenant, based on a preliminary allocation in accordance with Fresh Start Accounting. In-place intangibles are amortized over [ ] years, which represents the lease term, as a component of amortization expense.

g. Represents the fair value of identified intangible assets related to the fair value of favorable or unfavorable terms where we are the lessor with an acquired lease in place with off-market rental terms based on a preliminary purchase price allocation. A lease with favorable terms as lessor represents an asset and a lease with unfavorable terms as lessor represents a liability, both of which are amortized over [ ] years, which represents the lease term.

h. Represents expected accruals for timing of payments associated with expenses described in adjustments (bb) and (cc) below.

i. Represents the fair value of deferred developer credits received as consideration historically from third-party mall developers in the form of an incentive to be used towards improvement of owned Properties. Amounts received have been utilized and no outstanding claw back rights exist for the third-party mall developers. Because the consideration received from deferred developer credits has been received in the past and has been fully utilized, no value has been assigned based on a preliminary purchase price allocation and the adjustment to deferred developer credits removes the full value of the historical balance.

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The Properties transferred pursuant to the PropCo Formation Transactions will be recorded at fair value as the PropCo Formation Transactions will be accounted for in accordance with Fresh Start Accounting. These fair values were based, in part, on preliminary third-party market valuations. Because these fair values were based on currently available information and assumptions and estimates that we believe are reasonable at this time, they are subject to reallocation as additional information becomes available. As we finalize our Fresh Start Accounting allocation, actual adjustments may differ from the pro forma adjustments and the difference, if any, may be material. For further description regarding the components of the preliminary purchase price allocation, please refer to adjustment (b) for land, buildings and improvements, net; adjustment (f) for in-place leases; and adjustment (g) for in-place leases with favorable or unfavorable market leases.

2. Adjustments to the Pro Forma Consolidated Income Statements

aa. Reflects rental revenue pursuant to the terms of the Retail Master Lease. As a triple-net lease, the Retail Master Lease rental revenue excludes costs associated with real estate taxes, insurance and operating costs, which are to be paid directly by New JCP. Rental revenue is $[ ] million higher than lease payments due as a result of recording rental revenue on a straight-line basis. The initial base rent for the Retail Master Lease is $121.2 million per year, subject to a rental abatement of 50% ($60.6 million) for the first year. During each subsequent lease year, commencing with the third lease year, the base rent shall be subject to a consumer price index adjustment, provided that such adjustment shall not (i) result in an increase that exceeds 2% of the then-applicable base rent or (ii) decrease the then-applicable base rent. Such adjustment is described more fully in “Item 2. Financial Information− Management’ s Discussion and Analysis of Financial Condition and Results of Operations−Results of Operations−Revenue.” The rental revenue rates also include amounts collected from the tenant for ground leases whereby we are also a lessee.

Additionally, reflects rental revenue pursuant to the terms of the DC Master Lease. As a triple-net lease, the DC Master Lease rental revenue excludes costs associated with real estate taxes, insurance and operating costs, which are to be paid directly by New JCP. Rental revenue is $[ ] million higher than lease payments due as a result of recording rental revenue on a straight-line basis. The initial base rent for the DC Master Lease is $35.4 million per year. The base rent during each subsequent lease year commencing with the third lease year, shall be increased by 2%.

Also reflects an increase for the accretion and amortization related to leases with unfavorable terms where we are the lessor of $[ ] million, and a decrease for leases with favorable terms where we are the lessor of $[ ], based on a preliminary purchase price allocation.

bb. Represents amounts to be paid annually to Hilco for services rendered as the Manager in accordance with the Management Agreement and other ongoing operational costs, such as [ ]. Remaining amounts are not factually supportable, and as a result, further adjustment for general and administrative costs has been excluded.

cc. Represents expenses expected to be incurred for ground lease expense and insurance expense. These expenses were based on the historical expenses incurred by J. C. Penney. Ground lease rent expenses of $[ ] and amortization of above/below market ground leases of $[ ] are included in the adjustment to property operating expenses based on the terms of the executed ground leases. As the Master Leases are triple-net leases, costs associated with maintenance, real estate taxes and insurance will be paid directly by New JCP.

dd. Reflects depreciation and amortization expense related to the building and improvements and the remaining useful lives of the properties. Depreciation and amortization also reflects amortization of in-place lease intangible assets based on fair values pursuant to Fresh Start Accounting. Depreciation and amortization expense is recorded over the estimated useful lives of the respective assets for building and improvements and the lease term for intangible in-place lease assets using the straight-line method.

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ee. We compute net earnings (loss) per Trust Certificate for both basic and diluted net earnings (loss). Basic net earnings (loss) per Trust Certificate is computed using the weighted-average number of Trust Certificates outstanding during the period. Diluted net earnings (loss) per Trust Certificate is computed using the weighted-average number of Trust Certificates and the effect of potentially dilutive securities outstanding during the period. There were no potentially dilutive securities included in the pro forma calculation of earnings (loss) per Trust Certificate.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors
J. C. Penney Company, Inc.:

Opinion on the Balance Sheet

We have audited the accompanying balance sheet of Copper Property CTL Pass Through Trust (the Company) as of December 21, 2020 (Formation Date) and the related notes (collectively, the balance sheet). In our opinion, the balance sheet presents fairly, in all material respects, the financial position of the Company as of December 21, 2020 (Formation Date) in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

This balance sheet is the responsibility of the Company' s management. Our responsibility is to express an opinion on the balance sheet based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the balance sheet is free of material misstatement, whether due to error or fraud. Our audit included performing procedures to assess the risks of material misstatement of the balance sheet, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the balance sheet. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the balance sheet. We believe that our audit provides a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company' s auditor since 2020.

Chicago, IL
December 29, 2020

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Copper Property CTL Pass Through Trust

Balance Sheet
December 21, 2020 (Formation Date)
(in thousands)

Assets	
Cash	$ –
Total assets	$ –
Certificateholders' Equity	
Trust Certificates, no par value, 50,000,000 certificates authorized, no certificates issued and outstanding	$ –
Additional paid-in capital	–
Total Certificateholders' equity	$ –

See accompanying notes to the Balance Sheet.

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Copper Property CTL Pass Through Trust

Notes to the Balance Sheet

1. Organization and Description of Business

Copper Property CTL Pass Through Trust (the "Trust") is a newly formed grantor trust, established as a New York common law trust on December 21, 2020 by entering into the Pass-Through Trust Agreement (the "Initial Trust Agreement").

The Trust was formed in connection with the reorganization of J. C. Penney Company, Inc. (and together with its subsidiaries as the context requires or indicates, "J. C. Penney"). On May 15, 2020, J. C. Penney and certain of its subsidiaries (together with J. C. Penney, the "Debtors") commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas. On December 12, 2020, the Debtors filed the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates (the "Plan of Reorganization"). The Bankruptcy Court entered an order confirming the Plan of Reorganization on December 16, 2020.

Pursuant to the Plan of Reorganization, the following transactions, among others, are expected to occur (collectively, the "PropCo Formation Transactions"):

i. J. C. Penney and certain of its subsidiaries (collectively, the "JCP Sellers") will transfer (the "Properties Transfer") their fee or leasehold interest (as applicable) in 160 retail properties (the "Retail Properties") and six warehouses (the "Warehouses" and, together with the Retail Properties, the "Properties") to the Trust' s wholly-owned property holding company subsidiaries (the "PropCos");

ii. the Initial Trust Agreement will be amended and restated (such amended and restated agreement, the "Amended Trust Agreement") to be between Copper BidCo LLC, an entity controlled by certain of the Debtors' lenders (replacing J. C. Penney Corporation, Inc.), and GLAS Trust Company LLC, continuing as trustee;

iii. J. C. Penney will assign to the Trust the master leases relating to the Properties (the "Master Leases"); and

iv. the Trust Certificates will be issued to certain of the Debtors' lenders pursuant to the Plan of Reorganization and Section 1145 of the Bankruptcy Code in final satisfaction of such lenders' claims against the Debtors.

The Properties Transfer will occur immediately prior to the transactions described in clauses (ii) through (iv) above. The date on which the PropCo Formation Transactions occur is referred to as the "PropCo Closing Date." Prior to such date, the Trust does not own, directly or indirectly, the Properties or any other assets, and it is not expected to own any such assets prior to the Properties Transfer.

After the PropCo Closing Date, the Trust' s future operations are expected to consist solely of (i) owning the Properties, (ii) leasing the Properties under the terms of the Master Leases to the tenants thereunder ("New JCP"), as the sole tenant, and (iii) subject to market conditions and the conditions set forth in the Amended Trust Agreement, selling the Properties to third-party purchasers as promptly as practicable after the PropCo Closing Date with the intent to complete the sale of all Properties within a short period of time, in each case through the PropCos. Together with the proceeds from sales of the Properties, the Master Leases will account for all of the Trust' s revenues.

On or about the PropCo Closing Date, the Trust intends to retain an affiliate of Hilco Real Estate LLC as its independent third-party manager, unrelated to J. C. Penney or New JCP, to perform asset management duties with respect to the Properties. After the PropCo Closing Date, J. C. Penney will have no ability to exercise any control over, or have any affiliation with, the Trust.

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2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying Balance Sheet is prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP").

Impairment of Long-Lived Assets

The Trust' s impairment policy reflects the go-forward accounting policy for the Trust upon the acquisition of the Properties.

Real Estate–The Trust periodically assesses whether there are any indicators that the value of its long-lived real estate and related intangible assets such as building and improvements or operating lease assets may be impaired or that their carrying value may not be recoverable. These impairment indicators include, but are not limited to, vacancies, an upcoming lease expiration, a tenant with credit difficulty, the termination of a lease by a tenant, significant underperformance relative to historical or projected future operating results or a likely disposition of the property.

For real estate assets held for investment and related intangible assets in which an impairment indicator is identified, the Trust follow a two-step process to determine whether an asset is impaired and to determine the amount of the charge. First, we compare the carrying value of the property' s asset group to the estimated future net undiscounted cash flow that we expect the property' s asset group will generate, including any estimated proceeds from the eventual sale of the property' s asset group. The undiscounted cash flow analysis requires us to make our best estimate of market rents, residual values, and holding periods. We estimate market rents and residual values using market information from outside sources such as third-party market research, external appraisals, broker quotes or recent comparable sales.

As the Trust' s objective is to sell the Retail Properties over a period of 12 months and the Warehouses over a period of six months, the holding periods used in the undiscounted cash flow analysis will reflect the short-term nature of the investment. Depending on the assumptions made and estimates used, the future cash flow projected in the evaluation of long-lived assets and associated intangible assets can vary within a range of outcomes. We consider the likelihood of possible outcomes in determining our estimate of future cash flows and, if warranted, we apply a probability-weighted method to the different possible scenarios. If the future net undiscounted cash flow of the property' s asset group is less than the carrying value, the carrying value of the property' s asset group is considered not recoverable. We then measure the impairment loss as the excess of the carrying value of the property' s asset group over its estimated fair value.

Assets Held for Sale–We generally classify real estate assets that are subject to operating leases or direct financing leases as held for sale when we have entered into a contract to sell the property, all material due diligence requirements have been satisfied, we have received a non-refundable deposit, and we believe it is probable that the disposition will occur within one year. When we classify an asset as held for sale, we compare the asset' s fair value less estimated cost to sell to its carrying value, and if the fair value less estimated cost to sell is less than the property' s carrying value, we reduce the carrying value to the fair value less estimated cost to sell. We base the fair value on the contract and the estimated cost to sell on information provided by brokers and legal counsel. We then compare the asset' s fair value (less estimated cost to sell) to its carrying value, and if the fair value, less estimated cost to sell, is less than the property' s carrying value, we reduce the carrying value to the fair value, less estimated cost to sell. We will continue to review the property for subsequent changes in the fair value, and may recognize an additional impairment charge, if warranted.

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3. Income Taxes

The Trust identifies its major tax jurisdiction as the United States. The Trust is classified as a "grantor trust" for U.S. federal income tax purposes. As a result, the Trust itself will not be subject to U.S. federal income tax, and the Trust expects any state tax liability would be immaterial. Instead, the Trust' s income and expenses will "flow through" to the Certificateholders, and the Trust' s trustee will report the Trust' s proceeds, income, deductions, gains and losses to the Internal Revenue Services on that basis.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors
J. C. Penney Company, Inc.:

Opinion on the Financial Statements

We have audited the accompanying Combined Schedule of Investments of Real Estate Assets to be Acquired as of December 31, 2019, and the related notes and financial statement schedule III (collectively, the Schedule of Investments). In our opinion, the Schedule of Investments present fairly, in all material respects, the real estate assets to be acquired described in Note 1 as of December 31, 2019, in conformity with U.S. generally accepted accounting principles.

Basis of Presentation

The accompanying Schedule of Investments was prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission for inclusion in the registration statement on Form 10 of Copper Property CTL Pass Through Trust as described in Note 1 and is not intended to be a complete presentation of total assets to be acquired by Copper Property CTL Pass Through Trust.

Basis for Opinion

This Schedule of Investments is the responsibility of J. C. Penney Company, Inc.' s management. Our responsibility is to express an opinion on the Schedule of Investments based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB), and are required to be independent with respect to J. C. Penney Company, Inc. in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Schedule of Investments is free of material misstatement, whether due to error or fraud. Our audit included performing procedures to assess the risks of material misstatement of the Schedule of Investments, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the Schedule of Investments. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the Schedule of Investments. We believe that our audit provides a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as auditor of the Schedule of Investments since 2020.

Chicago, IL
December 29, 2020

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Combined Schedules of Investments of Real Estate Assets to be Acquired
(in thousands)

	(unaudited) September 30, 2020	December 31, 2019
Real estate assets		
Land, buildings and improvements, net	$1,098,911	$1,154,698
Operating lease assets	26,376	34,447
Total real estate assets	$1,125,287	$1,189,145
Liabilities		
Operating lease liabilities	$31,482	$38,414
Deferred developer credits	21,313	22,948
Other liabilities	912	1,074
Total liabilities	$53,707	$62,436

See accompanying notes to the Combined Schedules of Investments of Real Estate Assets to be Acquired

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Notes to the Combined Schedules of Investments of Real Estate Assets to be Acquired

1. Organization and Description of Business

Copper Property CTL Pass Through Trust (the "Trust") is a newly formed grantor trust, established as a New York common law trust on December 21, 2020 by entering into the Pass-Through Trust Agreement (the "Initial Trust Agreement"). The Trust was formed in connection with the reorganization of J. C. Penney Company, Inc. (and together with its subsidiaries as the context requires or indicates, "J. C. Penney"). On May 15, 2020, J. C. Penney and certain of its subsidiaries (together with J. C. Penney, the "Debtors") commenced voluntary cases (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas. On December 12, 2020, the Debtors filed the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates (the "Plan of Reorganization"). The Bankruptcy Court entered an order confirming the Plan of Reorganization on December 16, 2020.

Pursuant to the Plan of Reorganization, the following transactions, among others, are expected to occur (collectively, the "PropCo Formation Transactions"):

i. J. C. Penney and certain of its subsidiaries (collectively, the "JCP Sellers") will transfer (the "Properties Transfer") their fee or leasehold interest (as applicable) in 160 retail properties (the "Retail Properties") and six warehouses (the "Warehouses" and, together with the Retail Properties, the "Properties") to the Trust' s wholly-owned property holding company subsidiaries (the "PropCos");

ii. the Initial Trust Agreement will be amended and restated (such amended and restated agreement, the "Amended Trust Agreement") to be between Copper BidCo LLC, an entity controlled by certain of the Debtors' lenders (replacing J. C. Penney Corporation, Inc.), and GLAS Trust Company LLC, continuing as trustee;

iii. J. C. Penney will assign to the Trust the master leases relating to the Properties (the "Master Leases"); and

iv. a series of equity trust certificates designated as "Copper Property CTL Pass Through Certificates" (the "Trust Certificates") will be issued to certain of the Debtors' lenders pursuant to the Plan of Reorganization and Section 1145 of the Bankruptcy Code in final satisfaction of such lenders' claims against the Debtors; a registration statement on Form 10 (the "Form 10") is being filed by the Trust in order to voluntarily register the Trust Certificates under Section 12(g) of the Securities Exchange Act of 1934, as amended.

The Properties Transfer will occur immediately prior to the transactions described in clauses (ii) through (iv) above. The date on which the PropCo Formation Transactions occur is referred to as the "PropCo Closing Date." Prior to such date, the Trust does not own, directly or indirectly, the Properties or any other assets, and it is not expected to own any such assets prior to the Properties Transfer.

After the PropCo Closing Date, the Trust' s future operations are expected to consist solely of (i) owning the Properties, (ii) leasing the Properties under the terms of the Master Leases to the tenants thereunder ("New JCP"), as the sole tenant, and (iii) subject to market conditions and the conditions set forth in the Amended Trust Agreement, selling the Properties to third-party purchasers as promptly as practicable after the PropCo Closing Date with the intent to complete the sale of all Properties within a short period of time, in each case through the PropCos. Together with the proceeds from sales of the Properties, the Master Leases will account for all of the Trust' s revenues.

On or about the PropCo Closing Date, the Trust intends to retain an affiliate of Hilco Real Estate LLC as its independent third-party manager, unrelated to J. C. Penney or New JCP, to perform asset management duties with respect to the Properties. After the PropCo Closing Date, J. C. Penney will have no ability to exercise any control over, or have any affiliation with, the Trust.

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The accompanying Combined Schedules of Investments of Real Estate Assets to be Acquired ("Combined Schedules of Investments") reflects the Properties. The portfolio of Properties consists of approximately 31.8 million square feet (unaudited) of building space and is broadly diversified by location across 37 U.S. states and Puerto Rico.

2. Adoption of New Accounting Standards

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-02, *Leases (Topic 842)* ("ASC 842"), as amended, which requires lessees to recognize most leases on their balance sheets as lease liabilities with corresponding right-of-use assets. J. C. Penney adopted the provisions of the new lease standard effective January 1, 2019, using the modified retrospective adoption method and the simplified transition option available in the new lease standard. This allows J. C. Penney to continue to apply the legacy guidance in the old standard (ASC Topic 840, Leases ("ASC 840")) upon adoption. J. C. Penney also elected the package of practical expedients available under the transition provisions of the new lease standard, which include (a) not reassessing ASC 840 evaluations on whether expired or existing contracts contain leases, (b) not reassessing lease classification previously assessed under ASC 840, and (c) not revaluing initial direct costs for existing leases under ASC 840. J. C. Penney also elected the practical expedient to carry forward historical accounting for any land easements on existing contracts.

3. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying Combined Schedules of Investments reflects the Retail Stores and the Warehouses directly attributable to J. C. Penney' s real estate holdings to be owned by the Trust pursuant to the Plan of Reorganization. The Combined Schedules of Investments does not represent the financial position of a single legal entity, but rather a combination of entities under common control that have been "carved out" of J. C. Penney' s consolidated financial statements. Intercompany balances related to entities that continue to be under common control after the PropCo Formation Transactions have been eliminated in combination. The Combined Schedules of Investments is prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") as established by FASB in the Accounting Standards Codification ("ASC"), including modifications issued under ASU. The Combined Schedules of Investments has been derived from the accounting records of J. C. Penney using the historical basis of assets of J. C. Penney. J. C. Penney believes the assumptions underlying the Combined Schedules of Investments are reasonable. However, the Combined Schedules of Investments included herein may not necessarily reflect the Trust' s financial position in the future or what the Trust' s financial position would have been had the Trust operated independently from J. C. Penney at the date presented.

Use of Estimates

J. C. Penney has made a number of estimates, judgments and assumptions that affect the reported amounts of assets in the Combined Schedules of Investments. Estimates are required in order for J. C. Penney to prepare the Combined Schedules of Investments in conformity with GAAP. Significant estimates, judgments and assumptions were required in a number of areas, including, but not limited to, determining the useful lives of real estate properties, determination of discount rates in ground leases, reasonably certain lease terms for ground leases, and evaluating the impairment of long-lived assets. J. C. Penney has based these estimates, judgments and assumptions on historical experience and various other factors that J. C. Penney believes to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions and conditions.

The novel coronavirus ("COVID-19") pandemic has created, and may continue to create, significant uncertainty in macroeconomic conditions, and the extent of its impact on the operational and financial performance will depend on certain developments, including the duration and spread of the outbreak and the

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impact on the Properties' initial sole tenant, New JCP. During the nine months ended September 30, 2020, certain estimates and assumptions required increased judgment as a result of the pandemic. As events continue to evolve and additional information becomes available, actual results could differ from those estimates and any such differences may be material to the Combined Schedules of Investments.

Unaudited Interim Consolidated Financial Information

The accompanying Combined Schedule of Investments as of September 30, 2020 (the "Interim Combined Schedule of Investments") and these notes are unaudited. The Interim Combined Schedule of Investments have been prepared in accordance with GAAP and is presented in accordance with the rules and regulations of the Securities and Exchange Commission. In J. C. Penney' s opinion, the Interim Combined Schedule of Investments has been prepared on the same basis as the Combined Schedule of Investments as of December 31, 2019 and reflects all adjustments, which include only normal recurring adjustments necessary for the fair presentation of the Interim Combined Schedule of Investments as of September 30, 2020.

Impairment of Long-Lived Assets

J. C. Penney evaluated long-lived assets such as building and improvements or operating lease assets for impairment when events or changes in circumstances indicated that the carrying amount of those assets may not be recoverable. Factors considered important that could trigger an impairment review include, but are not limited to, significant underperformance relative to historical or projected future operating results and significant changes in the manner of use of the assets or J. C. Penney' s overall business strategies. Assets or asset groups that triggered an impairment review have been tested for recoverability by comparing the estimated undiscounted cash flows expected to result from the use of the asset plus any net proceeds expected from disposition of the asset to the carrying value of the asset. When the asset or asset group has been determined to be not recoverable on an undiscounted cash flow basis, the amount of the impairment loss was measured by comparing the carrying value of the asset or asset group to its fair value. J. C. Penney estimated fair value based on either a projected discounted cash flow method using a discount rate that is considered commensurate with the risk inherent in J. C. Penney' s current business model or appraised value, as appropriate. J. C. Penney also considered other factors estimating the fair value such as local market conditions, operating environment, and other trends.

During the twelve-month period ended December 31, 2019 and the nine-month period ended September 30, 2020, J. C. Penney recognized an approximate $0 and $1.9 million (unaudited) impairment, respectively, related to the Properties, in connection with circumstances relating to the Chapter 11 Cases. Such impairment is presented as a reduction to the carrying values in the Interim Combined Schedule of Investments.

Land, Buildings and Improvements

Land, buildings and improvements are stated at cost less accumulated depreciation. Additions and substantial improvements are capitalized and include expenditures that materially extend the useful lives of existing facilities. Maintenance and repairs that do not materially improve or extend the useful lives of the respective assets are expensed as incurred.

Depreciation expense is recorded over the estimated useful lives of the respective assets using the straight-line method. The range of lives is generally between 10 and 50 years for buildings and improvements.

Leases

At the lease commencement date, based on certain criteria, J. C. Penney determined lease classification as an operating or capital lease in accordance with ASC 840. Upon transition to ASC 842 (refer to Note 2), lease classification previously assessed under ASC 840 was carried forward as an operating or finance lease, and then a right-of-use asset and lease liability was recognized in the Combined Schedules of Investments for all leases.

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The lease liability is measured as the present value of unpaid lease payments measured based on the reasonably certain lease term and a discount rate. The initial right-of-use asset is measured as the lease liability plus certain other costs and is reduced by any lease incentives provided by the ground lessor.

Lease payments include fixed and in-substance fixed payments, variable payments based on an index or rate and termination penalties. Lease payments do not include variable lease components other than those that depend on an index or rate or any payments not considered part of the lease (i.e. payment of the lessor' s real estate taxes and insurance). As a policy election, we consider lease payments and all related other payments as one component of a lease.

The reasonably certain lease term includes the non-cancelable lease term and any renewal option periods where J. C. Penney has economically compelling reasons for future exercise.

The discount rate used in the present value calculations is the rate implicit in the lease, when known, or J. C. Penney' s estimated incremental borrowing rate. The incremental borrowing rate is estimated based on secured borrowings and credit risk relative to the time horizons of other publicly available data points that are consistent with the respective lease term.

The lease liability is amortized over the lease term at a constant periodic interest rate. The right-of-use assets related to operating leases are amortized over the lease term on a basis that renders a straight-line amount of rent expense which encompasses the amortization and interest component of the lease. If a lease is modified or there is a change in lease term, J. C. Penney assesses for any change in lease classification and remeasures the lease liability with a corresponding increase or decrease to the right-of-use-asset.

J. C. Penney has entered into 23 ground leases with third party landlords classified as operating leases which comprise the right of use asset and liability balances within the Combined Schedules of Investments. No other leasing activity where J. C. Penney is a lessee exists. As of December 31, 2019, and September 30, 2020, the remaining weighted average lease terms based on the reasonably certain lease term were 38.89 years and 30.31 years (unaudited), respectively, and the weighted average discount rate was 11% and 12.98% (unaudited), respectively, with changes resulting from the remeasurement of certain leases.

ASC 842 requires the remeasurement of the lease term upon the occurrence of a significant event or a change in circumstances that is within the control of the lessee that directly affects whether the lessee is reasonably certain to exercise or not to exercise an option to extend or terminate a lease. Following the filing of the Chapter 11 Cases on May 15, 2020, J. C. Penney remeasured certain leases based on a change in their reasonably certain lease term, which impacted certain Properties containing ground leases. The weighted average discount rate used for remeasuring those leases was 22.3%. As a result of the remeasurements, J. C. Penney reduced its operating lease assets by $6.9 million and its operating lease liabilities by $6.9 million.

As of December 31, 2019, future lease payments were as follows (in thousands):

2020	$4,091
2021	4,091
2022	3,956
2023	4,091
2024	4,265
Thereafter	173,197
Total lease payments	$193,691
Less: amounts representing interest	155,277
Present value of lease liabilities	$38,414

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Deferred Developer Credits

J. C. Penney occasionally receives consideration from third party mall developers in the form of an incentive to be used towards improvement of locations owned by J. C. Penney; such J. C. Penney improvements would typically enhance the overall leasing and retail operations of the mall or strip center owned by the third-party mall developer. The incentive payments are initially recorded as a deferred credit liability and then amortized to depreciation expense over the useful life of the improvements for which the credit was utilized. Amounts received have been utilized and no outstanding claw back rights exist for the third-party mall developers. As of December 31, 2019, and September 30, 2020, the balance for deferred developer credits was approximately $22.9 million and $21.3 million (unaudited), respectively.

4. Land, Buildings and Improvements

Land, buildings and improvements, net of accumulated depreciation consists of the following (in thousands):

	(unaudited) September 30, 2020	December 31, 2019
Land	$112,663	$112,674
Buildings and improvements	2,367,516	2,358,216
Gross land, buildings and improvements	$2,480,179	$2,470,890
Less: accumulated depreciation	(1,381,674)	(1,318,625)
Land, buildings and improvements, net	**$1,098,505**	**$1,152,265**
Construction in Progress	406	2,433
Total Land, buildings and improvements, net	**$1,098,911**	**$1,154,698**

5. Concentration of Credit Risk

The Combined Schedules of Investments will be exposed to concentrations of credit risk for leased assets as all assets are to be leased to the sole tenant, New JCP.

Significant Tenant

All of the Trust' s in-place rental income will be generated from New JCP as the Trust' s sole tenant.

The Properties have several tenants that constitute a significant asset concentration, as all are subsidiaries of New JCP and New JCP provides financial guarantees with respect to the Master Leases. Because New JCP is a recently formed, privately held entity that has not yet completed its first fiscal year, audited New JCP financial statements are not yet available. As such, because we believe the historical operations of J. C. Penney provide relevant historical information for the retail operations of New JCP, the audited financial statements of J. C. Penney that were included in J. C. Penney' s Annual Report on Form 10-K for the fiscal year ended February 1, 2020 are incorporated by reference herein. In addition, the unaudited interim financial statements of J. C. Penney that were included in J. C. Penney' s Quarterly Report on Form 10-Q for the quarterly period ended October 31, 2020 are incorporated by reference herein.

In referring to J. C. Penney' s financial statements, however, investors should be aware that J. C. Penney is not the tenant of the Properties and will not be providing a guaranty in respect of the Master Leases. Furthermore, although we believe J. C. Penney' s financial statements provide helpful information about the historical retail operations of New JCP, investors should be aware that there will be meaningful differences, and those differences may be significant, between the financial statements of New JCP and J. C. Penney, including the following: (i) depreciation and amortization expense and property and equipment, net of New JCP is expected to be proportionately lower due to New JCP acquiring only a portion of J. C. Penney' s assets (i.e., not the Properties); (ii) lease expense of New JCP is expected to be higher because J. C. Penney historically owned the

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Properties; (iii) interest expense, net of New JCP is expected to be lower, reflecting its $520 million term loan and revolving credit facility with commitments of $2 billion as of the closing of its acquisition from J. C. Penney as compared to J. C. Penney' s long-term debt of approximately $3.7 billion as of February 1, 2020; and (iv) New JCP will not have pension-related expenses or prepaid pension assets because it did not assume J. C. Penney' s pension plan. At this time, it is not possible to quantify the change in the expected depreciation and amortization expense, property and equipment, net or lease expense primarily due to New JCP having not completed the associated purchase price allocation for the acquisition of its assets.

Please see "Cautionary Statement Regarding Forward-Looking Statements" in the Form 10 for important information regarding, among other things, the limitations and risks associated with forward-looking statements.

6. Subsequent Events

Events subsequent to September 30, 2020 were evaluated and except for those events disclosed within Note 1, *Organization and Description of Business*, no other events were identified requiring further disclosure in the Combined Schedules of Investments.

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Copper Property CTL Pass Through Trust

REAL ESTATE ASSETS TO BE ACQUIRED
SCHEDULE III–REAL ESTATE AND ACCUMULATED DEPRECIATION

December 31, 2019
(Dollars in Thousands)

Property	Location	Property Type	Encumbrances	Initial Cost to Company (a)		Costs Capitalized Subsequent to Acquisition (a)	Gross Amount Carried at Close of Period (b)			Accumulated Depreciation	Date Acquired	Life upon which Depreciation is Computed
				Land	Building & Improvements		Land	Building & Improvements	Total			
THE MALL AT TURTLE CREEK	JONESBORO, AR	Retail Store	(d)	(a)	(a)	(a)	1	6,680	6,681	(2,387)	(a)	(c)
SHACKLEFORD CROSSING	LITTLE ROCK, AR	Retail Store	(d)	(a)	(a)	(a)	903	10,120	11,023	(3,031)	(a)	(c)
YUMA PALMS REGIONAL CENTER	YUMA, AZ	Retail Store	(d)	(a)	(a)	(a)	570	7,984	8,553	(3,518)	(a)	(c)
PALM VALLEY CORNERSTONE	GOODYEAR, AZ	Retail Store	–	(a)	(a)	(a)	3,137	10,241	13,378	(3,711)	(a)	(c)
SUPERSTITION SPRINGS MALL	MESA, AZ	Retail Store	–	(a)	(a)	(a)	–	11,650	11,650	(7,623)	(a)	(c)
ARROWHEAD TOWNE CENTER	GLENDALE, AZ	Retail Store	–	(a)	(a)	(a)	–	13,855	13,855	(7,498)	(a)	(c)
PARADISE VALLEY MALL	PHOENIX, AZ	Retail Store	(d)	(a)	(a)	(a)	438	11,801	12,238	(9,549)	(a)	(c)
IMPERIAL VALLEY MALL	EL CENTRO, CA	Retail Store	(d)	(a)	(a)	(a)	2	7,973	7,975	(3,476)	(a)	(c)
THE SHOPS AT MONTEBELLO	MONTEBELLO, CA	Retail Store	(d)	(a)	(a)	(a)	2	13,224	13,225	(9,525)	(a)	(c)
ANTELOPE VALLEY MALL	PALMDALE, CA	Retail Store	(d)	(a)	(a)	(a)	–	12,038	12,038	(7,941)	(a)	(c)
VALLEY PLAZA	BAKERSFIELD, CA	Retail Store	(d)	(a)	(a)	(a)	–	13,983	13,983	(9,501)	(a)	(c)
GLENDALE GALLERIA	GLENDALE, CA	Retail Store	(d)	(a)	(a)	(a)	990	15,238	16,228	(10,915)	(a)	(c)
HUNTINGTON PARK CBD	HUNTINGTON PARK, CA	Retail Store	–	(a)	(a)	(a)	2,324	5,818	8,142	(3,862)	(a)	(c)
WESTFIELD PLAZA BONITA	NATIONAL CITY, CA	Retail Store	(d)	(a)	(a)	(a)	233	16,557	16,790	(11,279)	(a)	(c)

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Property	Location	Property Type	Encumbrances	Initial Cost to Company (a)		Costs Capitalized Subsequent to Acquisition (a)	Gross Amount Carried at Close of Period (b)			Accumulated Depreciation	Date Acquired	Life upon which Depreciation is Computed
				Land	Building & Improvements		Land	Building & Improvements	Total			
WESTFIELD PALM DESERT	PALM DESERT, CA	Retail Store	(d)	(a)	(a)	(a)	–	7,234	7,234	(5,144)	(a)	(c)
WESTFIELD CULVER CITY	CULVER CITY, CA	Retail Store	(d)	(a)	(a)	(a)	151	12,636	12,787	(8,276)	(a)	(c)
WESTFIELD GALLERIA AT ROSEVILLE	ROSEVILLE, CA	Retail Store	(d)	(a)	(a)	(a)	3	19,088	19,091	(8,166)	(a)	(c)
VICTORIA GARDENS	RANCHO CUCAMONGA, CA	Retail Store	(d)	(a)	(a)	(a)	1	13,735	13,736	(6,077)	(a)	(c)
THE ORCHARD AT SLATTEN RANCH	ANTIOCH, CA	Retail Store	–	(a)	(a)	(a)	5,961	19,543	25,504	(5,418)	(a)	(c)
PLAZA AT WEST COVINA	WEST COVINA, CA	Retail Store	(d)	(a)	(a)	(a)	652	9,416	10,067	(6,161)	(a)	(c)
WESTFIELD NORTH COUNTY	ESCONDIDO, CA	Retail Store	(d)	(a)	(a)	(a)	–	12,846	12,846	(8,719)	(a)	(c)
SOUTHBAY PAVILION AT CARSON	CARSON, CA	Retail Store	(d)	(a)	(a)	(a)	935	6,516	7,451	(4,667)	(a)	(c)
PACIFIC VIEW MALL	VENTURA, CA	Retail Store	(d)	(a)	(a)	(a)	–	11,906	11,906	(5,306)	(a)	(c)
GALLERIA AT TYLER	RIVERSIDE, CA	Retail Store	(d)	(a)	(a)	(a)	336	12,890	13,226	(8,080)	(a)	(c)
ARDEN FAIR MALL	SACRAMENTO, CA	Retail Store	(d)	(a)	(a)	(a)	360	17,893	18,253	(9,917)	(a)	(c)
NORTHRIDGE FASHION CENTER	NORTHRIDGE, CA	Retail Store	–	(a)	(a)	(a)	596	29,662	30,258	(18,511)	(a)	(c)
BREA MALL	BREA, CA	Retail Store	–	(a)	(a)	(a)	–	17,211	17,211	(9,424)	(a)	(c)
WESTFIELD SANTA ANITA	ARCADIA, CA	Retail Store	(d)	(a)	(a)	(a)	–	11,318	11,318	(8,871)	(a)	(c)
PROMENADE AT TEMECULA	TEMECULA, CA	Retail Store	(d)	(a)	(a)	(a)	–	10,271	10,271	(4,854)	(a)	(c)
SOLANO TOWN CENTER	FAIRFIELD, CA	Retail Store	(d)	(a)	(a)	(a)	165	13,503	13,668	(9,442)	(a)	(c)
FASHION VALLEY	SAN DIEGO, CA	Retail Store	–	(a)	(a)	(a)	–	24,791	24,791	(18,876)	(a)	(c)
WESTMINSTER MALL	WESTMINSTER, CA	Retail Store	–	(a)	(a)	(a)	–	18,492	18,492	(14,340)	(a)	(c)
THE SHOPS AT TANFORAN	SAN BRUNO, CA	Retail Store	–	(a)	(a)	(a)	1,167	14,335	15,502	(10,647)	(a)	(c)
THE OAKS	THOUSAND OAKS, CA	Retail Store	(d)	(a)	(a)	(a)	160	11,446	11,606	(8,244)	(a)	(c)
STONERIDGE S/C	PLEASANTON, CA	Retail Store	(d)	(a)	(a)	(a)	417	17,524	17,941	(12,717)	(a)	(c)
FIRST & MAIN TOWN CENTER	COLORADO SPRINGS, CO	Retail Store	(d)	(a)	(a)	(a)	–	8,427	8,427	(2,557)	(a)	(c)

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TOWN CENTER AT AURORA	AURORA, CO	Retail Store	(d)	(a)	(a)	(a)	179	9,872	10,051	(6,389)	(a)	(c)
SOUTHLANDS S/C	AURORA, CO	Retail Store	(d)	(a)	(a)	(a)	3,150	11,103	14,254	(3,437)	(a)	(c)
PARK MEADOWS	LONE TREE, CO	Retail Store	(d)	(a)	(a)	(a)	–	16,335	16,335	(7,229)	(a)	(c)
WESTFARMS MALL	FARMINGTON, CT	Retail Store	(d)	(a)	(a)	(a)	9	15,476	15,485	(10,063)	(a)	(c)
THE SHOPPES AT BUCKLAND HILLS	MANCHESTER, CT	Retail Store	(d)	(a)	(a)	(a)	–	12,681	12,681	(7,272)	(a)	(c)
DANBURY FAIR	DANBURY, CT	Retail Store	(d)	(a)	(a)	(a)	409	12,212	12,621	(7,825)	(a)	(c)
CHRISTIANA MALL	NEWARK, DE	Retail Store	(d)	(a)	(a)	(a)	366	13,977	14,342	(10,777)	(a)	(c)
THE LOOP WEST	KISSIMMEE, FL	Retail Store	–	(a)	(a)	(a)	2,547	11,585	14,132	(3,389)	(a)	(c)
PEMBROKE LAKES MALL	PEMBROKE PINES, FL	Retail Store	–	(a)	(a)	(a)	–	16,002	16,002	(9,882)	(a)	(c)
THE MALL AT WELLINGTON GREEN	WELLINGTON, FL	Retail Store	–	(a)	(a)	(a)	8	13,403	13,411	(5,740)	(a)	(c)
WESTFIELD BROWARD	PLANTATION, FL	Retail Store	–	(a)	(a)	(a)	275	14,667	14,942	(9,811)	(a)	(c)
WESTFIELD BRANDON	BRANDON, FL	Retail Store	–	(a)	(a)	(a)	–	10,668	10,668	(6,260)	(a)	(c)
PIER PARK	PANAMA CITY BEACH, FL	Retail Store	–	(a)	(a)	(a)	1,722	10,732	12,454	(2,774)	(a)	(c)
DADELAND MALL	MIAMI, FL	Retail Store	–	(a)	(a)	(a)	–	12,640	12,640	(6,702)	(a)	(c)
WESTFIELD COUNTRYSIDE	CLEARWATER, FL	Retail Store	(d)	(a)	(a)	(a)	435	9,152	9,587	(6,886)	(a)	(c)
MIAMI INTERNATIONAL MALL	MIAMI, FL	Retail Store	–	(a)	(a)	(a)	901	14,008	14,909	(8,279)	(a)	(c)
SOUTH POINT S/C	MCDONOUGH, GA	Retail Store	(d)	(a)	(a)	(a)	2,423	9,805	12,227	(2,893)	(a)	(c)
NEWNAN CROSSING	NEWNAN, GA	Retail Store	(d)	(a)	(a)	(a)	1,534	8,676	10,210	(2,876)	(a)	(c)
CORAL RIDGE MALL	CORALVILLE, IA	Retail Store	(d)	(a)	(a)	(a)	13	6,163	6,175	(2,598)	(a)	(c)
BOISE TOWNE SQUARE	BOISE, ID	Retail Store	(d)	(a)	(a)	(a)	–	9,426	9,426	(6,674)	(a)	(c)
MOKENA MARKETPLACE	MOKENA, IL	Retail Store	–	(a)	(a)	(a)	2,573	13,616	16,189	(3,821)	(a)	(c)
NORTH RIVERSIDE PARK MALL	NORTH RIVERSIDE, IL	Retail Store	–	(a)	(a)	(a)	1,523	12,952	14,475	(8,300)	(a)	(c)
OAKRIDGE COURT	ALGONQUIN, IL	Retail Store	(d)	(a)	(a)	(a)	1,681	12,571	14,252	(3,561)	(a)	(c)
ORLAND SQUARE	ORLAND PARK, IL	Retail Store	(d)	(a)	(a)	(a)	312	20,626	20,938	(14,911)	(a)	(c)

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HAWTHORN S/C	VERNON HILLS, IL	Retail Store	(d)	(a)	(a)	(a)	2,183	23,355	25,537	(11,827)	(a)	(c)
HAMILTON TOWN CENTER	NOBLESVILLE, IN	Retail Store	(d)	(a)	(a)	(a)	1,894	10,541	12,435	(3,095)	(a)	(c)
OAK PARK MALL	OVERLAND PARK, KS	Retail Store	(d)	(a)	(a)	(a)	–	20,246	20,246	(16,136)	(a)	(c)
CORBIN PARK	OVERLAND PARK, KS	Retail Store	(d)	(a)	(a)	(a)	1,240	14,102	15,342	(3,525)	(a)	(c)
ASHLAND TOWN CENTER	ASHLAND, KY	Retail Store	(d)	(a)	(a)	(a)	–	9,264	9,264	(2,625)	(a)	(c)
FLORENCE MALL	FLORENCE, KY	Retail Store	(d)	(a)	(a)	(a)	484	11,812	12,295	(8,645)	(a)	(c)
MALL OF LOUISIANA	BATON ROUGE, LA	Retail Store	(d)	(a)	(a)	(a)	–	12,804	12,804	(6,537)	(a)	(c)
STIRLING LAFAYETTE S/C	LAFAYETTE, LA	Retail Store	(d)	(a)	(a)	(a)	1,914	11,938	13,853	(3,277)	(a)	(c)
NORTHSHORE MALL	PEABODY, MA	Retail Store	(d)	(a)	(a)	(a)	554	20,092	20,646	(10,383)	(a)	(c)
WESTFIELD ANNAPOLIS	ANNAPOLIS, MD	Retail Store	(d)	(a)	(a)	(a)	1	14,184	14,184	(7,553)	(a)	(c)
WHITE MARSH MALL	BALTIMORE, MD	Retail Store	(d)	(a)	(a)	(a)	516	13,744	14,260	(9,999)	(a)	(c)
THE MALL IN COLUMBIA	COLUMBIA, MD	Retail Store	–	(a)	(a)	(a)	904	21,532	22,436	(12,232)	(a)	(c)
ST CHARLES TOWNE CENTER	WALDORF, MD	Retail Store	(d)	(a)	(a)	(a)	20	11,389	11,409	(7,457)	(a)	(c)
GRAND TRAVERSE MALL	TRAVERSE CITY, MI	Retail Store	(d)	(a)	(a)	(a)	5	4,974	4,979	(3,057)	(a)	(c)
RIVERTOWN CROSSINGS	GRANDVILLE, MI	Retail Store	(d)	(a)	(a)	(a)	118	8,332	8,450	(3,741)	(a)	(c)
WATERSIDE MARKETPLACE	CHESTERFIELD TOWNSHP, MI	Retail Store	(d)	(a)	(a)	(a)	2,201	11,989	14,189	(3,520)	(a)	(c)
LAKESIDE MALL	STERLING HEIGHTS, MI	Retail Store	(d)	(a)	(a)	(a)	98	19,964	20,063	(15,898)	(a)	(c)
OAKLAND MALL	TROY, MI	Retail Store	(d)	(a)	(a)	(a)	1,034	21,043	22,078	(15,047)	(a)	(c)
TWELVE OAKS MALL	NOVI, MI	Retail Store	(d)	(a)	(a)	(a)	272	13,942	14,214	(10,676)	(a)	(c)
TAMARACK VILLAGE	WOODBURY, MN	Retail Store	(d)	(a)	(a)	(a)	1,664	8,154	9,818	(3,412)	(a)	(c)
ROSEDALE S/C	ROSEVILLE, MN	Retail Store	(d)	(a)	(a)	(a)	422	14,884	15,306	(10,803)	(a)	(c)
MID RIVERS MALL	ST PETERS, MO	Retail Store	(d)	(a)	(a)	(a)	–	14,574	14,574	(8,374)	(a)	(c)
THE PLAZA AT SHOAL CREEK	KANSAS CITY, MO	Retail Store	(d)	(a)	(a)	(a)	2,593	12,227	14,820	(3,625)	(a)	(c)

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SOUTHAVEN TOWNE CENTER	SOUTHAVEN, MS	Retail Store	(d)	(a)	(a)	(a)	–	7,542	7,542	(2,830)	(a)	(c)
THE STREETS AT SOUTHPOINT	DURHAM, NC	Retail Store	–	(a)	(a)	(a)	–	7,487	7,487	(3,580)	(a)	(c)
THE MALL AT ROCKINGHAM PARK	SALEM, NH	Retail Store	(d)	(a)	(a)	(a)	7	8,863	8,870	(5,989)	(a)	(c)
PHEASANT LANE MALL	NASHUA, NH	Retail Store	–	(a)	(a)	(a)	179	9,347	9,526	(5,704)	(a)	(c)
WOODBRIDGE CENTER	WOODBRIDGE, NJ	Retail Store	(d)	(a)	(a)	(a)	1,568	17,608	19,177	(13,019)	(a)	(c)
ROCKAWAY TOWNSQUARE	ROCKAWAY, NJ	Retail Store	(d)	(a)	(a)	(a)	2	21,649	21,651	(16,485)	(a)	(c)
NEWPORT CENTRE	JERSEY CITY, NJ	Retail Store	(d)	(a)	(a)	(a)	1	19,136	19,137	(9,219)	(a)	(c)
FREEHOLD RACEWAY MALL	FREEHOLD, NJ	Retail Store	(d)	(a)	(a)	(a)	33	17,692	17,725	(9,853)	(a)	(c)
CHERRY HILL MALL	CHERRY HILL, NJ	Retail Store	(d)	(a)	(a)	(a)	1,290	15,630	16,920	(10,938)	(a)	(c)
CORONADO CENTER	ALBUQUERQUE, NM	Retail Store	–	(a)	(a)	(a)	1,279	10,503	11,783	(7,433)	(a)	(c)
COTTONWOOD MALL	ALBUQUERQUE, NM	Retail Store	(d)	(a)	(a)	(a)	–	10,389	10,389	(5,921)	(a)	(c)
GALLERIA AT SUNSET	HENDERSON, NV	Retail Store	(d)	(a)	(a)	(a)	–	13,110	13,110	(7,029)	(a)	(c)
MEADOWS MALL	LAS VEGAS, NV	Retail Store	(d)	(a)	(a)	(a)	481	17,892	18,373	(12,998)	(a)	(c)
MEADOWOOD MALL	RENO, NV	Retail Store	(d)	(a)	(a)	(a)	482	11,359	11,841	(8,823)	(a)	(c)
THE MALL AT BAY PLAZA	BRONX, NY	Retail Store	–	(a)	(a)	(a)	–	36,955	36,955	(18,846)	(a)	(c)
QUEENS CENTER	ELMHURST, NY	Retail Store	–	(a)	(a)	(a)	8,000	42,234	50,234	(19,678)	(a)	(c)
GATEWAY SHOPPING CENTER I & II	BROOKLYN, NY	Retail Store	(d)	(a)	(a)	(a)	–	25,897	25,897	(6,338)	(a)	(c)
STATEN ISLAND MALL	STATEN ISLAND, NY	Retail Store	–	(a)	(a)	(a)	–	25,735	25,735	(14,181)	(a)	(c)
THE SHOPS AT FALLEN TIMBERS	MAUMEE, OH	Retail Store	(d)	(a)	(a)	(a)	500	10,014	10,514	(3,092)	(a)	(c)
POLARIS FASHION PLACE	COLUMBUS, OH	Retail Store	(d)	(a)	(a)	(a)	–	10,928	10,928	(4,729)	(a)	(c)
STONE CREEK TOWNE CENTER	COLERAIN TOWNSHIP, OH	Retail Store	(d)	(a)	(a)	(a)	1,618	9,920	11,538	(3,069)	(a)	(c)

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THE MALL AT TUTTLE CROSSING	DUBLIN, OH	Retail Store	(d)	(a)	(a)	(a)	–	11,081	11,081	(5,665)	(a)	(c)
SOUTHPARK CENTER	STRONGSVILLE, OH	Retail Store	(d)	(a)	(a)	(a)	–	11,745	11,745	(5,776)	(a)	(c)
SHOPS AT MOORE	MOORE, OK	Retail Store	(d)	(a)	(a)	(a)	5	7,724	7,729	(2,433)	(a)	(c)
CENTER AT OWASSO	OWASSO, OK	Retail Store	(d)	(a)	(a)	(a)	–	11,712	11,712	(2,922)	(a)	(c)
PENN SQUARE MALL	OKLAHOMA CITY, OK	Retail Store	(d)	(a)	(a)	(a)	–	12,813	12,813	(7,254)	(a)	(c)
CLACKAMAS TOWN CENTER	PORTLAND (HAPPY VALLEY), OR	Retail Store	(d)	(a)	(a)	(a)	651	14,813	15,464	(10,333)	(a)	(c)
WESTMORELAND MALL	GREENSBURG, PA	Retail Store	(d)	(a)	(a)	(a)	–	12,241	12,241	(6,472)	(a)	(c)
THE MALL AT ROBINSON T/C	PITTSBURGH, PA	Retail Store	(d)	(a)	(a)	(a)	18	11,401	11,418	(5,030)	(a)	(c)
HIGH POINTE COMMONS	HARRISBURG, PA	Retail Store	(d)	(a)	(a)	(a)	2,023	9,929	11,952	(3,258)	(a)	(c)
ROSS PARK MALL	PITTSBURGH, PA	Retail Store	(d)	(a)	(a)	(a)	26	14,875	14,901	(9,835)	(a)	(c)
MAYAGUEZ MALL	MAYAGUEZ, PR	Retail Store	–	(a)	(a)	(a)	–	9,012	9,012	(5,339)	(a)	(c)
PLAZA CENTRO	CAGUAS, PR	Retail Store	–	(a)	(a)	(a)	–	2,173	2,173	(1,184)	(a)	(c)
STONES RIVER MALL	MURFREESBORO, TN	Retail Store	(d)	(a)	(a)	(a)	8	7,027	7,034	(2,506)	(a)	(c)
COOL SPRINGS GALLERIA	FRANKLIN, TN	Retail Store	(d)	(a)	(a)	(a)	–	8,404	8,404	(5,422)	(a)	(c)
WOLFCHASE GALLERIA	MEMPHIS, TN	Retail Store	(d)	(a)	(a)	(a)	–	11,802	11,802	(6,029)	(a)	(c)
EL MERCADO PLAZA	EL PASO, TX	Retail Store	(d)	(a)	(a)	(a)	–	9,913	9,913	(2,995)	(a)	(c)
THE SHOPS AT STONE PARK	HOUSTON, TX	Retail Store	–	(a)	(a)	(a)	1,938	10,752	12,689	(2,875)	(a)	(c)
WEST GRAND PROMENADE	KATY, TX	Retail Store	(d)	(a)	(a)	(a)	1,115	9,960	11,075	(3,518)	(a)	(c)
SUNRISE MALL	BROWNSVILLE, TX	Retail Store	(d)	(a)	(a)	(a)	–	6,011	6,011	(2,736)	(a)	(c)
MIDLAND PARK MALL	MIDLAND, TX	Retail Store	(d)	(a)	(a)	(a)	–	5,933	5,933	(4,583)	(a)	(c)
ALAMO RANCH MARKETPLACE	SAN ANTONIO, TX	Retail Store	(d)	(a)	(a)	(a)	1,600	11,474	13,074	(3,229)	(a)	(c)
FAIRMONT CENTER	PASADENA, TX	Retail Store	(d)	(a)	(a)	(a)	–	9,660	9,660	(3,214)	(a)	(c)
MALL DEL NORTE	LAREDO, TX	Retail Store	(d)	(a)	(a)	(a)	–	11,433	11,433	(7,094)	(a)	(c)
DEERBROOK MALL	HUMBLE, TX	Retail Store	(d)	(a)	(a)	(a)	–	10,368	10,368	(5,235)	(a)	(c)

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ALLIANCE TOWN CENTER	FORT WORTH, TX	Retail Store	–	(a)	(a)	(a)	–	9,716	9,716	(3,200)	(a)	(c)
SOUTHPARK MEADOWS S/C	AUSTIN, TX	Retail Store	(d)	(a)	(a)	(a)	–	8,238	8,238	(2,894)	(a)	(c)
TEAS CROSSING	CONROE, TX	Retail Store	(d)	(a)	(a)	(a)	2,451	10,303	12,753	(2,921)	(a)	(c)
BAYBROOK MALL	FRIENDSWOOD, TX	Retail Store	(d)	(a)	(a)	(a)	–	8,751	8,751	(3,363)	(a)	(c)
THE PARKS AT ARLINGTON	ARLINGTON, TX	Retail Store	(d)	(a)	(a)	(a)	–	17,444	17,444	(9,346)	(a)	(c)
KILLEEN MALL	KILLEEN, TX	Retail Store	(d)	(a)	(a)	(a)	–	4,415	4,415	(3,182)	(a)	(c)
NEW BRAUNFELS T/C AT CREEKSIDE	NEW BRAUNFELS, TX	Retail Store	(d)	(a)	(a)	(a)	938	10,543	11,482	(2,758)	(a)	(c)
UNIVERSITY OAKS S/C	ROUND ROCK, TX	Retail Store	(d)	(a)	(a)	(a)	2,421	10,681	13,102	(3,066)	(a)	(c)
VALLE VISTA MALL	HARLINGEN, TX	Retail Store	(d)	(a)	(a)	(a)	–	5,855	5,855	(4,291)	(a)	(c)
POST OAK MALL	COLLEGE STATION, TX	Retail Store	(d)	(a)	(a)	(a)	–	4,923	4,923	(3,361)	(a)	(c)
VILLAGE AT FAIRVIEW	FAIRVIEW, TX	Retail Store	(d)	(a)	(a)	(a)	118	10,559	10,677	(2,820)	(a)	(c)
WAXAHACHIE TOWNE CENTER CROSSING	WAXAHACHIE, TX	Retail Store	(d)	(a)	(a)	(a)	1,385	8,509	9,894	(2,608)	(a)	(c)
SHERMAN TOWN CENTER	SHERMAN, TX	Retail Store	(d)	(a)	(a)	(a)	1,166	8,939	10,105	(2,684)	(a)	(c)
FIRST COLONY MALL	SUGARLAND, TX	Retail Store	(d)	(a)	(a)	(a)	–	12,774	12,774	(6,283)	(a)	(c)
MEMORIAL CITY S/C	HOUSTON, TX	Retail Store	(d)	(a)	(a)	(a)	1,991	12,541	14,532	(4,251)	(a)	(c)
STONEBRIAR CENTRE	FRISCO, TX	Retail Store	(d)	(a)	(a)	(a)	13	14,685	14,699	(6,381)	(a)	(c)
GOLDEN TRIANGLE MALL	DENTON, TX	Retail Store	(d)	(a)	(a)	(a)	–	8,414	8,414	(5,798)	(a)	(c)
BARTON CREEK SQUARE	AUSTIN, TX	Retail Store	(d)	(a)	(a)	(a)	250	13,057	13,306	(9,061)	(a)	(c)
THE WOODLANDS MALL	THE WOODLANDS, TX	Retail Store	(d)	(a)	(a)	(a)	1,125	11,780	12,905	(5,543)	(a)	(c)
ROBERTSON' S CREEK	FLOWER MOUND, TX	Retail Store	–	(a)	(a)	(a)	2,169	4,727	6,896	(1,667)	(a)	(c)
LAKELINE MALL	CEDAR PARK, TX	Retail Store	(d)	(a)	(a)	(a)	–	10,694	10,694	(5,318)	(a)	(c)
THE DISTRICT	SOUTH JORDAN, UT	Retail Store	(d)	(a)	(a)	(a)	1,283	10,869	12,152	(3,399)	(a)	(c)
PENINSULA TOWN CENTER	HAMPTON, VA	Retail Store	(d)	(a)	(a)	(a)	703	9,244	9,948	(2,877)	(a)	(c)
SOUTHPARK MALL	COLONIAL HEIGHTS, VA	Retail Store	(d)	(a)	(a)	(a)	–	10,507	10,507	(7,070)	(a)	(c)
SPRINGFIELD TOWN CENTER	SPRINGFIELD, VA	Retail Store	(d)	(a)	(a)	(a)	146	16,473	16,620	(9,804)	(a)	(c)

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				Land	Building & Improvements		Land	Building & Improvements	Total			
DULLES TOWN CENTRE	STERLING, VA	Retail Store	(d)	(a)	(a)	(a)	–	8,879	8,879	(4,268)	(a)	(c)
FAIR OAKS MALL	FAIRFAX, VA	Retail Store	(d)	(a)	(a)	(a)	925	20,138	21,063	(15,314)	(a)	(c)
COLUMBIA CENTER	KENNEWICK, WA	Retail Store	(d)	(a)	(a)	(a)	1,418	10,802	12,220	(6,481)	(a)	(c)
BELLIS FAIR	BELLINGHAM, WA	Retail Store	(d)	(a)	(a)	(a)	–	5,154	5,154	(3,215)	(a)	(c)
ALDERWOOD MALL	LYNNWOOD, WA	Retail Store	(d)	(a)	(a)	(a)	428	17,376	17,804	(11,997)	(a)	(c)
WESTFIELD SOUTHCENTER	TUKWILA, WA	Retail Store	(d)	(a)	(a)	(a)	–	19,837	19,837	(14,064)	(a)	(c)
FOX RIVER MALL	APPLETON, WI	Retail Store	–	(a)	(a)	(a)	2	6,160	6,162	(4,366)	(a)	(c)
1634 SALISBURY ROAD	STATESVILLE, NC	Warehouse	(d)	(a)	(a)	(a)	28	16,989	17,016	(13,664)	(a)	(c)
5555 SCARBOROUGH BLVD.	COLUMBUS, OH	Warehouse	(d)	(a)	(a)	(a)	2,797	68,877	71,674	(42,340)	(a)	(c)
10500 LACKMAN ROAD	LENEXA, KS	Warehouse	(d)	(a)	(a)	(a)	2,643	85,828	88,471	(63,326)	(a)	(c)
11111 STEAD BLVD.	RENO, NV	Warehouse	(d)	(a)	(a)	(a)	1,084	60,156	61,241	(43,645)	(a)	(c)
1701 INTERMODAL PARKWAY ALLIANCE AIRPORT	HASLET, TX	Warehouse	(d)	(a)	(a)	(a)	5,200	66,600	71,800	(27,971)	(a)	(c)
5500 SOUTH EXPRESSWAY	ATLANTA, GA	Warehouse	(d)	(a)	(a)	(a)	1,486	25,790	27,276	(21,308)	(a)	(c)
							112,674	**2,360,649**	**2,473,323**	**(1,318,625)**		

(a) We have prepared Schedule III – Real Estate and Accumulated Depreciation ("Schedule III") omitting certain of the required information articulated in Securities and Exchange Commission Rule 12-28 in Regulation S-X. Rule 12-28 requires property specific information for the initial cost capitalized, costs capitalized subsequent to acquisition, and the date of construction and/or acquisition; these disclosures have been omitted from Schedule III. We are unable to provide all of the disclosures as many of the Properties were constructed prior to when J. C. Penney' s current fixed asset accounting software was implemented, and thus we do not have the requisite historical records readily available.

(b) The aggregate cost of land, buildings and improvements for federal income tax purposes is approximately $819 million (unaudited).

(c) Depreciation is computed based on the following estimated useful lives: Buildings and Improvements 10–50 years

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(d) Identified assets were pledged by J. C. Penney, which owned and operated the real property, to secure obligations under its credit facilities. None of the subsidiaries of J. C. Penney that pledged the above referenced real properties are being contributed to the Trust in connection with the Plan of Reorganization. However, in connection therewith, these real properties will be released from the aforementioned pledges in connection with their transfer to the Trust.

Reconciliation of Real Estate

(in thousands)	2019
Balance at the beginning of the year	$2,442,856
Additions	31,455
Impairments	–
Dispositions and write-offs	(987)
Balance at the end of the year	$2,473,323

Reconciliation of Accumulated Depreciation

(in thousands)	2019
Balance at the beginning of the year	$(1,234,570)
Depreciation expense	(84,408)
Dispositions and write-offs	353
Balance at the end of the year	$(1,318,625)

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(b) The following exhibits are required by Item 601 of Regulation S-K and are being filed as part of this registration statement.

Number	Description
2.1	Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates, Case No. 20-20182 (DRJ), dated December 12, 2020.
3.1**	Amended and Restated Pass-Through Trust Agreement, to be dated the PropCo Closing Date, between Copper BidCo LLC, as beneficiary, and GLAS Trust Company LLC, as trustee.
4.1**	Form of Registration Rights and Resale Cooperation Agreement between the Trust and the Certificateholders named therein.
10.1*	Retail Master Lease, dated as of December 7, 2020, by and among J. C. Penney Corporation, Inc., J. C. Penney Properties, LLC and J. C. Penney Puerto Rico, Inc., as Landlord, and Penney Tenant I LLC, as Tenant.
10.2*	Distribution Center Master Lease, dated as of December 7, 2020, by and between J. C. Penney Properties, LLC, as Landlord, and Penney Tenant II LLC, as Tenant.
10.3*	Transition Services Agreement, dated as of December 7, 2020, by and between Penney Borrower LLC and J. C. Penney Corporation, Inc.
10.4**	Management Agreement, dated as of [ ], by and between GLAS Trust Company LLC, as trustee, and Hilco Real Estate LLC.
21.1**	List of subsidiaries.
23.1	Consent of KPMG LLP, independent registered public accounting firm of J. C. Penney Company, Inc.
99.1	Amended Order Approving the Disclosure Statement for, and Confirming, the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates, Case No. 20-20182 (DRJ), entered December 16, 2020.

* Certain schedules and similar attachments have been omitted. The Trust agrees to furnish a supplemental copy of any omitted schedule or attachment to the SEC upon request.

** To be filed by amendment.

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SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

J. C. Penney Corporation, Inc., as sponsor of Copper
Property CTL Pass Through Trust

By: /s/ Steve Whaley
Name: Steve Whaley
Title: Principal Accounting Officer and Controller

Dated: December 29, 2020

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Exhibit 2.1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	)	Chapter 11
J. C. PENNEY COMPANY, INC., *et al.*,[1]	)	Case No. 20-20182 (DRJ)
Debtors.	)	(Jointly Administered)

AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION
OF J. C. PENNEY COMPANY, INC. AND ITS DEBTOR AFFILIATES

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)
Christopher J. Marcus, P.C. (admitted *pro hac vice*)
Aparna Yenamandra (admitted *pro hac vice*)
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Co-Counsel to the Debtors and Debtors-in-Possession

1 A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' Claims and Noticing Agent at http://cases.primeclerk.com/JCPenney. The location of Debtor J. C. Penney Company, Inc.' s principal place of business and the Debtors' service address in these Chapter 11 Cases is 6501 Legacy Drive, Plano, Texas 75024.

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INTRODUCTION

J. C. Penney Company, Inc. ("J. C. Penney") and its affiliated debtors and debtors in possession in the above-captioned Chapter 11 Cases (each a "Debtor" and, collectively, the "Debtors") propose this joint plan of reorganization (the "Plan") for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings set forth in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, properties and operations, projections, risk factors, a summary and analysis of the Plan, and certain related matters.

ALL HOLDERS OF CLAIMS OR INTERESTS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

ARTICLE I
DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms.

As used in this Plan, capitalized terms have the meanings set forth below.

1. "*ABL Agent*" means Wells Fargo Bank, acting through such Affiliates or branches as it may designate, as collateral agent and administrative agent to the ABL Credit Agreement, or any administrative agent as permitted by the terms set forth in the ABL Credit Agreement.

2. "*ABL Claim*" means any Claim, including Secured Swap Claims, derived from, based upon, or arising under the ABL Credit Agreement.

3. "*ABL Credit Agreement*" means that certain Credit Agreement, dated as of June 20, 2014 by and among, inter alios, J. C. Penney Corporation, Inc., as a borrower, certain of the Debtors, as other borrowers and guarantors, the ABL Agent, and each of the lenders party thereto from time to time, as amended under (i) that certain Amendment No. 1 to Credit Agreement, dated as of December 10, 2015, (ii) that certain Amendment No. 2 to Credit Agreement, dated as of June 20, 2017, and (iii) that certain Amendment No. 3 to Credit Agreement, dated as of March 18, 2018, and as further amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time.

4. "*ABL Documents*" means, collectively, the ABL Credit Agreement and any related letter of credit documentation, security agreement, intercreditor agreement, and any other collateral and ancillary documents, including any forbearance agreements, as amended, restated, modified, or supplemented from time to time in accordance with their terms.

5. "*ABL Intercreditor Agreement*" means that certain Intercreditor and Collateral Cooperation Agreement, dated as of June 23, 2016 by and among, inter alias, J. C. Penney Corporation, Inc., the ABL Agent, the Term Loan Administrative Agent, and each of the Representatives party thereto from time to time, as amended, restated, amended and restated, extended, supplemented, or otherwise modified from time to time.

6. "*ABL Lenders*" means the lenders from time to time party to the ABL Credit Agreement.

7. "*Acquired Assets*" means, collectively, all OpCo Acquired Assets and PropCo Acquired Assets.

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8. *"Administrative / Priority Claims Reserve*" means a segregated account established by the Plan Administrator established in accordance with Article VIII.D.

9. "*Administrative / Priority Claims Reserve Amount*" means the amount of Cash necessary to satisfy all Allowed Administrative Claims, Allowed Priority Claims, Allowed Secured Tax Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims to the extent such Allowed Administrative Claims and Allowed Priority Claims are not Assumed Liabilities, which aggregate amount shall be funded into the Administrative / Priority Claims Reserve.

10. "*Administrative Claim*" means a Claim for costs and expenses of administration of the Estates under sections 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Estates and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims in the Chapter 11 Cases; and (c) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930; *provided*, *however*, that any Administrative Claim that is an Assumed Liability shall be satisfied pursuant to the Asset Purchase Agreement.

11. "*Administrative Claim Bar Date*" means the deadline for filing requests for payment of Administrative Claims, which shall be the later of (a) 30 days after the Effective Date or (b) in the event an Executory Contract is rejected following the Effective Date, solely as to Administrative Claims related to such rejected Executory Contract, 30 days after notice to the counterparty to such rejected Executory Contract.

12. "*Administrative Claim Objection Bar Date*" means the deadline for filing objections to requests for payment of Administrative Claims (other than requests for payment of Professional Fee Claims), which shall be the first Business Day that is 180 days following the Effective Date; *provided* that the Administrative Claims Objection Bar Date may be extended by the Bankruptcy Court after notice and a hearing.

13. "*Affiliate*" means, with respect to any person, or any other person, which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean, with respect to any Person, (x) the possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership, limited liability company or other ownership interests, by contract or otherwise) of such Person or (y) solely with respect to Affiliates of Consenting First Lien Lender, the investment or voting discretion or control with respect to discretionary accounts of such Person.

14. "*Aggregate Credit Bid*" means, collectively, (i) the DIP Credit Bid, and (ii) the Prepetition First Lien Credit Bid.

15. "*AHEC*" shall have the meaning set forth in the *Ad Hoc Equity Committee's Objection to Confirmation of Amended Joint Chapter 11 Plan of Reorganization of J.C. Penney Company, Inc. and its Debtor Affiliates* [Docket No. 1980]

16. "*Allowed*" means with respect to any Claim, except as otherwise provided in the Plan: (a) a Claim that is evidenced by a Proof of Claim Filed by the Claims Bar Date (or for which Claim under the Plan, the Bankruptcy Code, or pursuant to a Final Order a Proof of Claim is not or shall not be required to be Filed); (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not Disputed, and for which no Proof of Claim, as applicable, has been timely Filed; or (c) a Claim Allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; *provided* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim, as applicable, shall have been Allowed by a Final Order. Except as otherwise specified in the Plan or any Final Order, and except for any Claim that is Secured by property of a value in excess of the principal amount of such Claims, the amount of an Allowed Claim shall not include interest on such Claim from and after the Petition Date. For purposes of determining the amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of any Claim that the Debtors may hold against the Holder thereof, to the extent such Claim may be offset, recouped, or otherwise reduced under applicable law. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or Disputed, and for

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which no Proof of Claim is or has been timely Filed (where such Proof of Claim is required to be Filed), is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. For the avoidance of doubt: (x) a Proof of Claim Filed after the Claims Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim or agreement in writing by the Debtors and the holder of such late-Filed Claim; and (y) the Debtors may affirmatively determine to deem Unimpaired Claims Allowed to the same extent such Claims would be allowed under applicable non-bankruptcy law. "Allow" and "Allowing" shall have correlative meanings.

17. "*Asset Purchase Agreement*" means that certain Asset Purchase Agreement, dated as of October 28, 2020, executed by Copper Retail JV LLC and Copper BidCo LLC, and the Debtors in connection with the OpCo Sale and the PropCo Sale, a copy of which has been Filed with the Bankruptcy Court at [Docket No. 1668-1], together with all exhibits, appendices, supplements, documents, and agreements ancillary thereto, in each case as amended, modified, or supplemented from time to time.

18. "*Assigned Contracts*" means collectively, all OpCo Assigned Contracts and PropCo Assigned Contracts.

19. "*Assumed Liabilities*" means collectively, all OpCo Assumed Liabilities and PropCo Assumed Liabilities.

20. "*Avoidance Actions*" means any and all avoidance, recovery, subordination, or other Claims, actions, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 502, 510, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common Law, including fraudulent transfer Laws.

21. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101‑1532, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

22. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Southern District of Texas or such other court having jurisdiction over the Chapter 11 Cases, including, to the extent of the withdrawal of the reference under 28 U.S.C. § 156, the United States District Court for the Southern District of Texas.

23. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases and the general, local, and chambers rules of the Bankruptcy Court, as now in effect or hereafter amended.

24. "*Business Day*" means any day, other than a Saturday, Sunday, or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

25. "*Cash*" means the legal tender of the United States of America or the equivalent thereof, including bank deposits, checks, and cash equivalents, as applicable.

26. "*Cash Collateral*" has the meaning set forth in section 363(a) of the Bankruptcy Code.

27. "*Cause of Action*" or "*Causes of Action*" means any Claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, Secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, Law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and Claims under contracts or for breaches of duties imposed by Law; (b) the right to object to or otherwise contest Claims or Interests; (c) Claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; (d) such Claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state or foreign Law fraudulent transfer or similar Claim.

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28. "*Chapter 11 Cases*" means the procedurally consolidated cases Filed for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.

29. "*Claim*" means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

30. "*Claims and Noticing Agent*" means Prime Clerk LLC, the notice, Claims, and solicitation agent retained by the Debtors in the Chapter 11 Cases in accordance with the *Order Authorizing the Employment and Retention of Prime Clerk LLC as Claims, Noticing, and Solicitation Agent* [Docket No. 67].

31. "*Claims Bar Date*" means the date established pursuant to the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, including Section 503(b)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Docket No. 99] entered by the Bankruptcy Court on May 16, 2020, by which Proofs of Claim must be Filed with respect to Claims other than Administrative Claims, Claims held by Governmental Units, Claims based upon rejection damages, or other Claims or Interests for which the Bankruptcy Court entered an order excluding the holders of such Claims or Interests from the requirement of Filing Proofs of Claim.

32. "*Claims Objection Deadline*" means the date that is 180 days following the Effective Date.

33. "*Claims Register*" means the official register of Claims maintained by the Claims and Noticing Agent.

34. "*Class*" means a category of Claims or Interests under section 1122(a) of the Bankruptcy Code.

35. "*CM/ECF*" means the Bankruptcy Court' s Case Management and Electronic Case Filing system.

36. "*Confirmation*" means the Bankruptcy Court' s entry of the Confirmation Order on the docket of the Chapter 11 Cases, subject to all conditions specified in Article XI.A of the Plan having been (a) satisfied or (b) waived pursuant to Article XI.B of the Plan.

37. "*Confirmation Date*" means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

38. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court on Confirmation of the Plan, pursuant to sections 1128 and 1129 of the Bankruptcy Code and approval of the Disclosure Statement, as such hearing may be continued from time to time.

39. "*Confirmation Order*" means one or more orders of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

40. "*Consenting First Lien Lenders*" means the First Lien Lenders party to the RSA.

41. "*Consummation*" means the occurrence of the Effective Date.

42. "*Credit Bid*" shall mean, as applicable, a bid by the DIP Collateral Agent and the Term Loan/First Lien Notes Collateral Agent, in a manner consistent with the Financing Order, the Sale Order, and section 363(k) of the Bankruptcy Code.

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43. "*Credit Bid Distributions*" shall mean all the assets whose purchase was authorized by the Sale Order other than the OpCo Acquired Assets, including the New PropCo Securities and all of the Debtors' Cash except as necessary to fund the Administrative / Priority Claims Reserve, the Wind-Down Reserve, and the Professional Fee Escrow Account; *provided*, *however*, that any Credit Bid Distribution to be made to Holders of Allowed Claims (or the agent responsible for making such distribution) pursuant to the Sale Order and the Asset Purchase Agreement shall be made pursuant to the Sale Order and the Asset Purchase Agreement and not pursuant to this Plan.

44. "*Credit Bid Pro Rata*" shall mean, in accordance with the Asset Purchase Agreement and Sale Order and subject to the Minority First Lien Group Settlement, (a) with respect to DIP Claims, the proportion (x) each Holder' s Allowed DIP Claims bears to all Allowed DIP Claims and (y) the DIP Credit Bid bears to the Aggregate Credit Bid and (b) with respect to First Lien Claims, the proportion (x) each Holder' s Allowed First Lien Claims bears to all Allowed First Lien Claims and (y) the Prepetition First Lien Credit Bid bears to the Aggregate Credit Bid.

45. "*Creditors' Committee*" means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to the *Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 329].

46. "*Cure Cost*" means all amounts, including an amount of $0.00, required to cure any monetary defaults and other non-monetary defaults to the extent required by section 365 of the Bankruptcy Code, under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) that is to be assumed by the Debtors (and/or assigned by the Debtors pursuant to the Sale Order or the Confirmation Order) pursuant to sections 365 or 1123 of the Bankruptcy Code.

47. "*D&O Liability Insurance Policies*" means all insurance policies (including any "tail policy") and all agreements, documents or instruments relating thereto issued or providing coverage at any time to any of the Debtors or any of their predecessors for current or former directors' , managers' , and officers' liability.

48. "*Debtor Release*" means the release given on behalf of the Debtors and their Estates to the Released Parties as set forth in Article X.C of the Plan

49. "*Debtors*" means, collectively, each of the following: J. C. Penney Corporation, Inc.; J. C. Penney Company, Inc.; Future Source LLC; J. C. Penney Direct Marketing Services LLC; J. C. Penney Export Merchandising Corporation; J. C. Penney International, Inc.; J. C. Penney Properties, LLC; J. C. Penney Purchasing Corporation; JCP Construction Services, Inc.; JCP Media, Inc.; JCP New Jersey, LLC; JCP Procurement, Inc.; JCP Real Estate Holdings, LLC; JCP Realty, LLC; JCP Telecom Systems, Inc.; JCPenney Puerto Rico, Inc.; JCPenney Services, LLC; jcpSSC, Inc.

50. "*Deficiency Claims*" means, collectively, the First Lien Deficiency Claims and the Second Lien Notes Deficiency Claims.

51. "*Definitive Documents*" means, collectively, Plan and any Plan Supplement, the Disclosure Statement, the Confirmation Order, the Sale Order, the Disclosure Statement Order, the Asset Purchase Agreement and all documents related thereto.

52. "*Designee*" shall have the meaning set forth in the Asset Purchase Agreement.

53. "*DIP Agent*" means the "Administrative Agent" as defined in the DIP Credit Agreement.

54. "*DIP Claim*" means a Claim held by the DIP Lenders or the DIP Agent arising under or relating to the DIP Credit Agreement or the Financing Order, including any and all fees, interests paid in kind, and accrued but unpaid interest and fees arising under the DIP Credit Agreement.

55. "*DIP Collateral Agent*" means the "Collateral Agent" as defined in the DIP Credit Agreement.

56. "*DIP Credit Agreement*" means that Superpriority Senior Secured Debtor-In-Possession Credit and Guaranty Agreement evidencing the DIP Facility entered into in accordance with the Financing Order (as the same may be amended, amended and restated, modified or supplemented from time to time in accordance with its terms) terms and conditions of, and subject in all respects to the Financing Order.

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57. "*DIP Credit Bid*" means a Credit Bid of $900 million of DIP Claims.

58. "*DIP Credit Documents*" means the DIP Credit Agreement, including any amendments, modifications, supplements thereto, and together with any related notes, certificates, agreements, security agreements, documents, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related to or executed in connection therewith, which shall be in form and substance acceptable to the Debtors and the DIP Secured Parties.

59. "*DIP Facility*" means the senior secured superpriority, priming debtor-in-possession credit facility in an aggregate principal amount of $900 million, on the terms set forth in the DIP Credit Agreement and the Financing Order, as applicable.

60. "*DIP Lenders*" means the lenders under the DIP Credit Agreement.

61. "*DIP Secured Parties*" means, collectively, the DIP Lenders and the DIP Agent.

62. "*Disallowed*" means, with respect to any Claim, a Claim or any portion thereof that: (a) has been disallowed by a Final Order; (b) is scheduled as zero or as contingent, Disputed, or unliquidated and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law or the Plan; (c) is not scheduled and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law or the Plan; (d) has been withdrawn by agreement of the applicable Debtor and the holder thereof; or (e) has been withdrawn by the holder thereof.

63. "*Disbursing Agent*" means, as applicable, the Debtors, the Plan Administrator, or the Wind-Down Debtors (as applicable) or any Entity or Entities selected by the Debtors or the Plan Administrator to make or facilitate distributions contemplated under the Plan.

64. "*Disclosure Statement*" means the disclosure statement for the Plan, including all exhibits and schedules thereto.

65. "*Disclosure Statement Order*" means the order entered by the Bankruptcy Court approving the Disclosure Statement, entered on October 26, 2020 [Docket No. 1655].

66. "*Disputed*" means, with respect to any Claim or Interest, any Claim or Interest that is not yet Allowed.

67. "*Disputed Claim*" means a Claim that is not yet Allowed.

68. "*Distribution Date*" means a date on which the Disbursing Agent makes distributions to Holders of Claims and Interests pursuant to the Plan, which shall be as soon as reasonably practicable after the Effective Date.

69. "*Distribution Record Date*" means the date for determining which holders of Claims are eligible to receive distributions hereunder and shall be the Effective Date or such other date as designated in a Final Order of the Bankruptcy Court; *provided* that the Distribution Record Date shall not apply to any securities of the Debtors deposited with DTC, the holders of which shall receive a distribution in accordance with the customary procedures of DTC.

70. "*DTC*" means the Depository Trust Company.

71. "*Earnout Agreement*" has the meaning set forth in the Asset Purchase Agreement.

72. "*Effective Date*" means the date that is the first Business Day after the Confirmation Date on which (a) no stay of the Confirmation Order is in effect and (b) all conditions precedent to the occurrence of the Effective Date set forth in Article XI.A of the Plan have been satisfied or waived in accordance with Article XI.B of the Plan. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

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73. "*Entity*" means any entity, as defined in section 101(15) of the Bankruptcy Code.

74. "*Equity Commitment Letter*" shall have the meaning set forth in the Asset Purchase Agreement.

75. "*Estate*" means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to sections 301 and 541 upon the commencement of the applicable Debtor' s Chapter 11 Case.

76. "*Excluded Assets*" shall have the meaning set forth in the Asset Purchase Agreement.

77. "*Excluded Liabilities*" shall have the meaning set forth in the Asset Purchase Agreement.

78. "*Exculpated Parties*" means collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) each of the Consenting First Lien Lenders and any group thereof; (c) the Creditors' Committee and its members; (d) the Purchaser Group; (e) each current and former Affiliate of each Entity in clause (a) through the following clause (f); and (f) each Related Party of each Entity in clause (a) through this clause (f) including, among others, agents and trustees under the First Lien Debt Documents, the Term Loan Credit Documents, and the DIP Credit Documents.

79. "*Executory Contract*" means a contract to which one or more of the Debtors is a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

80. *"Existing Equity Interests*" means, collectively, the shares (or any Class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Debtor and options, warrants, rights, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any Class thereof), common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Debtors (in each case whether or not arising under or in connection with any employment agreement).

81. "*Exit ABL Facility*" means the new money asset-based loan facility in the principal amount of $2,000,000,000 in revolving loan commitments provided for under the Exit ABL Facility Documents.

82. "*Exit ABL Facility Agent*" means Wells Fargo Bank, National Association, as administrative and collateral agent under the Exit ABL Facility Agreement, solely in its capacity as such.

83. "*Exit ABL Facility Agreement*" means that certain credit, loan, or other agreement, dated as of the Effective Date, by and among, *inter alios*, OpCo, the Exit ABL Facility Agent, and the Exit ABL Facility Lenders, the terms of which shall be included in the Plan Supplement.

84. "*Exit ABL Facility Documents*" means, collectively, the Exit ABL Facility Agreement, and any and all other agreements, documents, and instruments delivered or to be entered into in connection therewith, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents.

85. "*Exit ABL Facility Lenders*" means the lenders party to the Exit ABL Facility Agreement.

86. "*Exit Facilities*" means, collectively, the Exit ABL Facility and the Exit FILO Facility.

87. "*Exit Facility Documents*" means, collectively, the Exit FILO Facility Documents and the Exit ABL Facility Documents.

88. "*Exit FILO Facility*" means the new money "first-in-last-out" term loan facility in the principal amount of $300,000,000 provided for under the Exit FILO Facility Documents.

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89. "*Exit FILO Facility Agent*" means Pathlight Capital LP, as administrative and collateral agent under the Exit FILO Facility Agreement, solely in its capacity as such.

90. "*Exit FILO Facility Agreement*" means that certain credit, loan, or other agreement, dated as of the Effective Date, by and among, *inter alios*, OpCo, the Exit FILO Facility Agent, and the Exit FILO Facility Lenders, the terms of which shall be included in the Plan Supplement.

91. "*Exit FILO Facility Documents*" means, collectively, the Exit FILO Facility Agreement, and any and all other agreements, documents, and instruments delivered or to be entered into in connection therewith, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents.

92. "*Exit FILO Facility Lenders*" means the lenders party to the Exit FILO Facility Agreement.

93. "*Federal Judgment Rate*" means the federal judgment rate in effect as of the Petition Date, compounded annually.

94. "*File*" or "*Filed*" means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

95. "*Final Order*" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, modified, or amended, is not subject to any pending stay and as to which the time to appeal, move for reargument, reconsideration, or rehearing, or seek certiorari has expired and no appeal, motion for reargument, reconsideration, or rehearing or petition for certiorari has been timely taken or Filed, or as to which any appeal that has been taken, motion for reargument, reconsideration, or rehearing that has been granted or any petition for certiorari that has been or may be Filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be Filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

96. "*Financing Order*" means the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 566].

97. "*First Lien Claims*" means any Claim on behalf of First Lien Debt.

98. "*First Lien Debt*" means, collectively, the First Lien Notes and the Term Loan.

99. "*First Lien Debt Documents*" means, collectively, the Term Loan Credit Agreement, the Prepetition Security Agreement, the First Lien Notes Indenture, and the Pari Passu Intercreditor Agreement.

100. "*First Lien Deficiency Claim*" means any unsecured Claim arising under the First Lien Debt Documents.

101. "*First Lien Lenders*" means, collectively, the First Lien Noteholders and the Term Lenders.

102. "*First Lien Noteholders*" means the parties holding the First Lien Notes as of the Voting Record Date.

103. "*First Lien Notes*" means the 5.875% Senior Secured Notes due 2023.

104. "*First Lien Notes Claim*" means any Claim on account of the First Lien Notes.

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105. "*First Lien Notes Indenture*" means that certain Indenture, dated as of June 23, 2016 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time), by and among JCP, as issuer, certain of the Company Parties, as guarantors, and Wilmington Trust, National Association, as the trustee.

106. "*First Lien Notes Trustee*" means Wilmington Trust, National Association, in its capacity as trustee under the First Lien Notes Indenture, together with its successors and permitted assigns.

107. "*General Unsecured Claim*" means any Claim, including the Deficiency Claims (if any) and the PBGC Claim, other than a Secured Claim, that is not (a) an Administrative Claim (including, for the avoidance of doubt, a Professional Fee Claim), (b) an Other Secured Claim, (c) an Other Priority Claim, or (d) an Intercompany Claim.

108. "*Governmental Unit*" shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

109. "*Impaired*" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

110. "*Indemnification Provisions*" means each of the Debtors' indemnification provisions currently in place, whether in the Debtors' bylaws, certificates of incorporation, other formation documents, board resolutions, indemnification agreements, employment contracts, or trust agreements, for the current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, other Professionals, and agents of the Debtors and such current and former directors' , officers' , and managers' respective Affiliates.

111. "*Initial Distribution Date*" means the date on which the Disbursing Agent shall make initial distributions to Holders of Claims and Interests pursuant to the Plan, which shall be as soon as reasonably practicable after the Effective Date.

112. "*Intercompany Claim*" means any Claim held by a Debtor or an Affiliate against a Debtor.

113. "*Intercompany Interest*" means any Interest held by a Debtor in another Debtor or non-Debtor subsidiary or Affiliate.

114. "*Interest*" means any Equity Security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor and any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor.

115. "*JCP*" means J. C. Penney Company, Inc., a company incorporated under the Laws of Delaware.

116. "*Judicial Code*" means title 28 of the United States Code, 28 U.S.C. §§ 1‑4001.

117. "*Law*" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

118. "*Lien*" means a lien as defined in section 101(37) of the Bankruptcy Code.

119. "*Master Lease Agreement*" shall have the meaning set forth in the Asset Purchase Agreement.

120. "*Minority First Lien Group*" means, collectively, the First Lien Lenders represented by Akin Gump Strauss Hauer & Feld LLP, Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP and Moelis & Company LLC.

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121. "*Minority First Lien Group Settlement*" means that certain settlement agreement, dated as of November 5, 2020, entered into by (i) the ad hoc group of First Lien Lenders represented by Milbank LLP, on behalf of itself and each of its members, (ii) the Minority First Lien Group, on behalf of itself and each of its members, and (iii) the Debtors, and approved by the Bankruptcy Court pursuant to the Sale Order.

122. "*New Organizational Documents*" shall mean the form of the certificates or articles of incorporation, bylaws, trust agreements, or such other applicable formation or governance documents of PropCo, which forms shall be in form and substance reasonably acceptable to the PropCo Purchaser and consistent with the approval rights set forth in the RSA and the Asset Purchase Agreement.

123. "*New PropCo Securities*" means the securities issued by PropCo in accordance with this Plan.

124. "*OpCo*" means an entity to be formed upon consummation of the OpCo Sale, in accordance with the Asset Purchase Agreement and Sale Order, which entity shall hold the OpCo Acquired Assets and OpCo Assumed Liabilities pursuant to the Sale Order.

125. "*OpCo Acquired Assets*" shall have the meaning set forth in the Asset Purchase Agreement.

126. "*OpCo Assigned Contracts*" shall have the meaning set forth in the Asset Purchase Agreement.

127. "*OpCo Assumed Liabilities*" shall have the meaning set forth in the Asset Purchase Agreement.

128. "*OpCo Available Contracts*" shall have the meaning set forth in the Asset Purchase Agreement.

129. "*OpCo Closing Date*" shall have the meaning set forth in the Asset Purchase Agreement.

130. "*OpCo Purchaser*" shall have the meaning set forth in the Asset Purchase Agreement.

131. "*OpCo Sale*" shall have the meaning set forth in the Asset Purchase Agreement.

132. "*OpCo-Company Cash Payment*" shall have the meaning set forth in the Asset Purchase Agreement.

133. "*Other Priority Claim*" means any Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim; or (b) a Priority Tax Claim, to the extent such Claim has not already been paid during the Chapter 11 Cases; *provided* that any Other Priority Claim that is an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of the Debtors or the Wind-Down Debtors and shall not be satisfied from the Administrative / Priority Claim Reserve.

134. "*Other Secured Claim*" means any Secured Claim, other than (a) an ABL Claim, (b) a DIP Claim, or (c) a First Lien Claim; *provided* that any Other Secured Claim that is an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of the Debtors or the Wind-Down Debtors and shall not be satisfied from the Administrative / Priority Claim Reserve.

135. "*Pari Passu Collateral Agent*" means Wilmington Trust, National Association, together with its permitted successors in its capacity as collateral agent pursuant to the Pari Passu Intercreditor Agreement.

136. "*Pari Passu Intercreditor Agreement*" means that certain Pari Passu Intercreditor Agreement, dated as of June 23, 2016, by and among inter alios, the Pari Passu Collateral Agent, JPMorgan Chase Bank, as Term Loan Authorized Representative for the Term Loan Secured Parties, Wilmington Trust, National Association, as Notes Authorized Representative for the Notes Secured Parties, and each of the additional Authorized Representatives party thereto from time to time, as amended, restated, amended and restated, extended, supplemented, or otherwise modified from time to time.

137. "*PBGC Claim*" means the Claim held by the Pension Benefit Guaranty Corporation in the amount of the PBGC Claim Amount

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138. "*PBGC Claim Amount*" is $500,400,000, representing the $417,000,000 amount of the asserted Claim of the Pension Benefit Guaranty Corporation plus all nondefault rate interest accrued through the Effective Date plus the amount equal to 20% of the amount of such asserted Claim, plus all nondefault rate interest accrued through the Effective Date.

139. "*Person*" has the meaning set forth in section 101(41) of the Bankruptcy Code.

140. "*Petition Date*" means May 15, 2020, the date on which the Debtors commenced the Chapter 11 Cases.

141. "*Plan"* has the meaning set forth in the Introduction.

142. "*Plan Administrator*" shall mean the person or persons identified in the Plan Supplement (as determined by the Debtors) to be appointed on the Effective Date and who will serve as the trustee and administrator for the Wind-Down Debtors as set forth in Article IV.D of the Plan.

143. "*Plan Supplement*" means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules) to be Filed by the Debtors no later than five (5) days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, including the following, as applicable: (a) the New Organizational Documents; (b) the Schedule of PropCo Assigned Contracts; (c) the Schedule of Rejected Executory Contracts and Unexpired Leases; (d) Schedule of Retained Causes of Action; (e) the Restructuring Transactions Memorandum; and (f) any additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Debtors shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement through the Effective Date, subject to the terms of the Plan, the Asset Purchase Agreement, the Sale Order, and the RSA.

144. "*Prepetition First Lien Credit Bid*" means a Credit Bid of $100 million of First Lien Debt.

145. "*Prepetition Security Agreement*" means that certain Amended and Restated Pledge and Security Agreement, dated as of June 23, 2016, by and among, J.C. Penney Corporation, Inc., as borrower, J.C. Penney Company, Inc., certain guarantors and Wilmington Trust, National Association, as Collateral Agent, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time.

146. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

147. "*Pro Rata*" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan.

148. "*Professional*" means an Entity: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

149. "*Professional Fee Claim*" means all Claims for accrued, contingent, and/or unpaid fees and expenses (including transaction and success fees) incurred by a Professional in the Chapter 11 Cases on or after the Petition Date and through and including the Effective Date that the Bankruptcy Court has not denied by Final Order. To the extent that the Bankruptcy Court or any higher court of competent jurisdiction denies or reduces by a Final Order any amount of a Professional' s fees or expenses, then those reduced or denied amounts shall no longer constitute Professional Fee Claims.

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150. "*Professional Fee Escrow Account*" means an interest-bearing escrow account to be funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Fee Escrow Amount.

151. "*Professional Fee Escrow Amount*" means the aggregate amount of Professional Fee Claims and other unpaid fees and expenses Professionals estimate they have incurred or will incur in rendering services to the Debtors prior to and as of the Effective Date, which estimates Professionals shall deliver to the Debtors as set forth in Article II of the Plan.

152. "*Proof of Claim*" means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases by the applicable Bar Date.

153. "*PropCo*" means an entity to be formed on or before the Effective Date which entity shall hold the PropCo Acquired Assets and PropCo Assumed Liabilities pursuant to the Asset Purchase Agreement and Confirmation Order.

154. "*PropCo Acquired Assets*" shall have the meaning set forth in the Asset Purchase Agreement.

155. "*PropCo Assigned Contracts*" shall have the meaning set forth in the Asset Purchase Agreement

156. "*PropCo Assumed Liabilities*" shall have the meaning set forth in the Asset Purchase Agreement.

157. "*PropCo Closing*" shall have the meaning set forth in the Asset Purchase Agreement.

158. "*PropCo Purchaser*" has the meaning set forth in the Asset Purchase Agreement.

159. "*PropCo Sale*" shall have the meaning set forth in the Asset Purchase Agreement.

160. "*PropCo Trust Agreement*" means the trust agreement entered into on or before the Effective Date between Copper BidCo LLC and the PropCo Trustee, as amended, restated, amended and restated, extended, supplemented, or otherwise modified from time to time.

161. "*PropCo Trustee*" means the Person designated as the trustee for PropCo, and any successor thereto in accordance with the PropCo Trust Agreement.

162. "*Purchaser Group*" shall have the meaning set forth in the Asset Purchase Agreement.

163. "*Purchasers*" shall have the meaning set forth in the Asset Purchase Agreement.

164. "*Quarterly Distribution Date*" means the first Business Day after the end of each quarterly calendar period (i.e., March 31, June 30, September 30, and December 31 of each calendar year) occurring after the Effective Date, or as soon thereafter as is reasonably practicable.

165. "*Reinstate*," "*Reinstated*," or "*Reinstatement*" means with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

166. "*Related Party*" means, with respect to any person or Entity, each of, and in each case in its capacity as such, current and former directors, managers, officers, investment committee members, special or other committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or Professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other Professionals and advisors of such Person or Entity, and any such Person' s or Entity' s respective heirs, executors, estates, and nominees.

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167. "*Released Party*" means each of the following, solely in its capacity as such: (a) the Debtors, the Wind-Down Debtors and the Plan Administrator; (b) the ABL Agent; (c) the ABL Lenders; (d) the Term Loan Administrative Agent; (e) the Term Lenders; (f) the First Lien Notes Trustee; (g) the First Lien Noteholders; (h) the Holders of Secured Swap Claims; (i) the Second Lien Notes Trustee; (j) the Second Lien Noteholders; (k) the Unsecured Notes Trustee; (l) the Unsecured Noteholders; (m) the Purchaser Group; (n) the DIP Agent; (o) the DIP Lenders; (p) the Consenting First Lien Lenders; (q) the PropCo Trustee; (r) the Term Loan/First Lien Notes Collateral Agent; (s) the Minority First Lien Group and its members; (t) with respect to each of the foregoing parties in clauses (a) through (s), each of such party' s current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), assigns, subsidiaries, direct and indirect equity holders, funds, portfolio companies, and management companies; and (u) with respect to each of the foregoing parties in clauses (a) through (t) (and groups consisting of such parties), each of such party' s Related Parties; and (v) all holders of Claims or Interests; *provided* that any holder of a Claim or Interest that (i) validly opts out of the releases contained in the Plan, (ii) files an objection to the releases contained in the Plan, or (iii) votes to reject the Plan shall not be a "Released Party."

168. "*Releasing Party*" means each of the following, solely in its capacity as such: (a) the Debtors, the Wind-Down Debtors and the Plan Administrator; (b) the ABL Agent; (c) the ABL Lenders; (d) the Term Loan Administrative Agent; (e) the Term Lenders; (f) the First Lien Notes Trustee; (g) the First Lien Noteholders; (h) the Holders of Secured Swap Claims; (i) the Second Lien Notes Trustee; (j) the Second Lien Noteholders; (k) the Unsecured Notes Trustee; (l) the Unsecured Noteholders; (m) the Purchaser Group; (n) the DIP Agent; (o) the DIP Lenders; (p) the Consenting First Lien Lenders; (q) the Creditors' Committee; (r) the U.S. Trustee; (s) the PropCo Trustee; (t) the Term Loan/First Lien Notes Collateral Agent; (u) the Minority First Lien Group and its members; (v) with respect to each of the foregoing parties in clauses (a) through (u), each of such party' s current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), assigns, subsidiaries, direct and indirect equity holders, funds, portfolio companies, and management companies; and (w) with respect to each of the foregoing parties in clauses (a) through (v), each of such party' s current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), assigns, subsidiaries, direct and indirect equity holders, funds, portfolio companies, and management companies; (x) with respect to each of the foregoing parties in clauses (a) through (w) (and groups consisting of such parties), each of such party' s Related Parties and (y) all holders of Claims or Interests; *provided* that any holder of a Claim or Interest that (i) validly opts out of the releases contained in the Plan, (ii) files an objection to the releases contained in the Plan, or (iii) votes to reject the Plan shall not be a "Releasing Party."

169. "*Restrictive Covenant*" means any interests, covenants, or rights applicable to such real estate assets that limit or condition the permitted use of the property such as easements, reciprocal easement agreements, construction operating and reciprocal easement agreements, operating or redevelopment agreements, covenants, licenses, or permits.

170. "*Restructuring Transactions*" means the transactions described in Article IV of the Plan.

171. "*Restructuring Transactions Memorandum*" means a document to be included in the Plan Supplement that will set forth the material components of the Restructuring Transactions, including any corporate restructuring or reorganization to be consummated in connection therewith.

172. "*RSA*" means that certain Restructuring Support Agreement, dated as of May 15, 2020, by and among the Debtors and the Consenting First Lien Lenders, including all exhibits and schedules attached thereto, as may be amended from time to time in accordance with the terms thereof.

173. "*Rules*" means Rule 501(a)(1), (2), (3) and (7) of the Securities Act.

174. "*Sale Order*" means the *Order (I) Authorizing (A) Entry Into and Performance Under the Asset Purchase Agreement And (B) the Sale of the OpCo Acquired Assets and the PropCo Acquired Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (C) Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 1814] which includes, for the avoidance of doubt, the Minority First Lien Group Settlement attached thereto as Exhibit A.

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175. "*Sale Transaction*" means, collectively, the PropCo Sale and the OpCo Sale, in accordance with the Asset Purchase Agreement, the Sale Order, and the Confirmation Order.

176. "*Schedule of PropCo Assigned Contracts*" means that certain schedule Filed with the Plan Supplement of Executory Contracts and Unexpired Leases to be assumed by the Debtors and assigned to PropCo or any subsidiary of PropCo pursuant to the Plan and in accordance with the Sale Order and Asset Purchase Agreement, as such schedule may be amended, modified, or supplemented from time to time by the Debtors in accordance with Article V of the Plan, which, including any modifications thereto, shall be acceptable to the Debtors, the Wind-Down Debtors, the Purchasers and PropCo.

177. "*Schedule of Rejected Executory Contracts and Unexpired Leases*" means that certain schedule Filed with the Plan Supplement of certain Executory Contracts and Unexpired Leases to be rejected by the Debtors pursuant to the Plan and in accordance with the Asset Purchase Agreement, as such schedule may be amended, modified, or supplemented from time to time by the Debtors in accordance with Article V of the Plan, which, including any modifications thereto, shall be acceptable to the Purchasers.

178. "*Schedule of Retained Causes of Action*" means the schedule, which will be included in the Plan Supplement, of certain Causes of Action of the Debtors that are not released, waived, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time.

179. "*Schedules*" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

180. "*Second Lien Noteholders*" means the parties holding the Second Lien Notes as of the Voting Record Date.

181. "*Second Lien Notes*" means the 8.625% Second Lien Secured Notes due 2025.

182. "*Second Lien Notes Claim*" means any Claim against a Debtor, the Estates, or property of a Debtor, including any Secured or unsecured Claim, arising under, related to, or in connection with the Second Lien Notes.

183. "*Second Lien Notes Claim Amount*" means $524,925,000, representing an amount equal to the par amount of the asserted Claim of the Second Lien Noteholders plus all nondefault rate interest accrued through the Effective Date plus the Amount equal to 20% of the par amount of such Claim, plus all nondefault rate interest accrued through the Effective Date.

184. "*Second Lien Notes Deficiency Claims*" means any unsecured Claims arising under the Second Lien Notes.

185. "*Second Lien Notes Indentures*" means those certain Indentures governing the Second Lien Notes.

186. "*Second Lien Notes Obligations*" has the meaning set forth in the Financing Order.

187. "*Second Lien Notes Trustee(s)*" means UMB Bank, N.A., in its capacity as trustee under the Second Lien Notes Indenture, together with its successors and permitted assigns.

188. "*Section 510(b) Claim*" means any Claim arising from: (a) rescission of a purchase or sale of a security of the Debtors or an Affiliate of the Debtors; (b) purchase or sale of such a security; or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

189. "*Secured*" means when referring to a Claim: (a) secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the applicable holder' s interest in the applicable Debtor' s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to the Plan, or separate order of the Bankruptcy Court, as a Secured Claim.

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190. "*Secured Claim*" means a Claim secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the applicable holder' s interest in the applicable Debtor' s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

191. "*Secured Swap Claim*" means Claims on behalf of the Secured Swap Obligations.

192. "*Secured Swap Obligations*" means the obligations of J. C. Penney Corporation, Inc. under the Swap Agreements (as defined in the ABL Credit Agreement) made on or around May 6, 2015 by J. C. Penney Corporation, Inc. and the Swap Providers.

193. "*Secured Tax Claim*" means any Secured Claim that, absent its Secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties; *provided* that any Secured Tax Claim that is an Assumed Liability under the Asset Purchase Agreement shall not be satisfied from the Administrative / Priority Claim Reserve and shall not be an obligation of the Debtors or the Wind-Down Debtors and shall not be considered a Secured Tax Claim.

194. "*Securities Act*" means the Securities Act of 1933, 15 U.S.C. §§ 77a‑77aa, together with the rules and regulations promulgated thereunder, as amended from time to time.

195. "*Security*" means any security, as defined in section 2(a)(1) of the Securities Act.

196. "*Solicitation Materials*" means all solicitation materials in respect of the Plan.

197. "*Term Lenders*" means the lenders under the Term Loan Credit Agreement.

198. "*Term Loan*" means the loan provided under the Term Loan Credit Agreement.

199. "*Term Loan Administrative Agent*" means, together, GLAS USA LLC, a limited liability company organized and existing under the Laws of the State of New Jersey, and GLAS AMERICAS LLC, a limited liability company organized and existing under the Laws of the State of New York and any of its successors, assigns, or any replacement agent appointed pursuant to the terms of the Term Loan Credit Agreement.

200. "*Term Loan Claim*" means any Claim arising under the Term Loan Credit Agreement.

201. "*Term Loan Credit Agreement*" means that certain Amended and Restated Credit and Guaranty Agreement dated as of June 23, 2016 by and among, inter alios, J. C. Penney Corporation, Inc., as borrower, certain of the Company Parties (as defined in the RSA), as guarantors, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto from time to time, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time.

202. "*Term Loan Credit Documents*" has the meaning set forth therefor in the Financing Order.

203. "*Term Loan Secured Parties*" has the meaning set forth therefor in the Financing Order.

204. "*Term Loan/First Lien Notes Collateral Agent*" means the collateral agent under the First Lien Notes Indenture and the Term Loan Credit Agreement.

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205. "*Term Loan/First Lien Notes Secured Parties*" has the meaning set forth therefor in the Financing Order.

206. "*Third-Party Release*" means the release given by each of the Releasing Parties to the Released Parties as set forth in Article X.D of the Plan.

207. "*U.S. Trustee*" means the United States Trustee for the Southern District of Texas.

208. "*U.S. Trustee Fees*" means fees arising under section 1930(a)(6) of the Judicial Code and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

209. "*Unexpired Lease*" means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

210. "*Unimpaired*" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

211. "*Unsecured Claims Earnout Pool*" means 50% of any incremental amounts payable under Section 1 of the Earnout Agreement between $110,000,000 and $140,000,000.

212. "*Unsecured Noteholder*s" means the Holders of Unsecured Notes.

213. "*Unsecured Notes*" means, collectively, the Second Lien Notes, the unsecured 5.65% notes due 2020, the 7.125% notes due 2023, the 6.9% notes due 2026, the 6.375% notes due 2036, the 7.4% debentures due 2037, and the 7.625% debentures due 2097.

214. "*Unsecured Notes Claims*" means any Claim against a Debtor, the Estates, or property of a Debtor, including any Secured or unsecured Claim, arising under, related to, or in connection with the Unsecured Notes.

215. "*Unsecured Notes Indentures*" means those certain Indentures governing the Unsecured Notes.

216. "*Unsecured Notes Trustees*" means, collectively, the trustees under the Unsecured Notes Indentures.

217. "*Voting Deadline*" means 4:00 p.m., prevailing Central Time, on November 17, 2020, which date may be extended by the Debtors.

218. "*Wells Fargo*" means Wells Fargo Bank and its managed entities.

219. "*Wells Fargo Bank*" means Wells Fargo Bank, National Association on its own behalf and on behalf of certain investment Affiliates and on behalf of certain investment Affiliates and other investment entities managed directly or indirectly by Wells Fargo.

220. "*Wind-Down*" means the wind-down, dissolution, and liquidation of the Debtors' Estates after the Effective Date.

221. "*Wind-Down Amount*" means, as contemplated by the Asset Purchase Agreement, Cash which shall be retained by the Debtors and used by the Plan Administrator to fund the Professional Fee Escrow Account and the Wind-Down in accordance with the Plan and the Confirmation Order.

222. "*Wind-Down Budget*" has the meaning set forth in the Asset Purchase Agreement.

223. "*Wind-Down Debtors*" means the Debtors, or any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date.

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224. "*Wind-Down Reserve*" means a segregated account established by the Plan Administrator established in accordance with Article VIII.C.

B. Rules of Interpretation.

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, restated, supplemented, or otherwise modified; (4) any reference to an Entity as a Holder of a Claim or Interest includes that Entity' s successors and assigns; (5) unless otherwise specified, all references herein to "Articles" are references to Articles of the Plan or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation"; (8) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (9) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with, applicable federal Law, including the Bankruptcy Code and the Bankruptcy Rules, or, if no rule of Law or procedure is supplied by federal Law (including the Bankruptcy Code and the Bankruptcy Rules) or otherwise specifically stated, the Laws of the State of Delaware, without giving effect to the principles of conflict of Laws; (10) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (11) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (12) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court' s CM/ECF system; (13) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (14) any effectuating provisions may be interpreted by the Debtors, the Wind-Down Debtors, or the Plan Administrator, in consultation with counsel to the ABL Lenders, in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, and such interpretation shall be conclusive; (15) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; (16) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (17) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company Laws; and (18) except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or the Wind-Down Debtors shall mean the Debtors and the Wind-Down Debtors, as applicable, to the extent the context requires.

C. Computation of Time.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

D. Governing Law.

Unless a rule of Law or procedure is supplied by federal Law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the Laws of the State of Delaware, without giving effect to the principles of conflict of Laws, shall govern the rights, obligations, construction, and implementation of the Plan, any

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agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided* that corporate or limited liability company governance matters relating to the Debtors not incorporated in Delaware shall be governed by the Laws of the state of incorporation or formation of the applicable Debtor.

E. Reference to Monetary Figures.

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

F. Controlling Document.

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan Supplement shall control. In the event of any inconsistency between the Plan or Plan Supplement, on the one hand, and the Confirmation Order on the other hand, the Confirmation Order shall control.

G. RSA Consent Rights and Controlling Documents.

Notwithstanding anything herein to the contrary, any and all consent rights of the parties to the RSA as set forth in the RSA with respect to the form and substance of the Plan, any Definitive Document, all exhibits to the Plan, and the Plan Supplement, including any amendments, restatements, supplements, or other modifications to such agreements and documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Section I.A of the Plan) and be fully enforceable as if stated in full herein until such time as the RSA is terminated in accordance with its terms.

H. Asset Purchase Agreement Consent Rights and Controlling Documents

Any and all consent rights of the Purchasers set forth in the Asset Purchase Agreement with respect to the form and substance of this Plan, the Confirmation Order, the Disclosure Statement, the Disclosure Statement Order, any Definitive Documents and any other documents related to the Sale Transaction, including any amendments, restatements, supplements, or other modifications to such agreements and documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Section I.A of the Plan) and be fully enforceable as if stated in full herein until such time as the Asset Purchase Agreement is terminated in accordance with its terms. Failure to reference in this Plan the rights referred to in the immediately preceding sentence as such rights relate to any document referenced in the Asset Purchase Agreement shall not impair such rights and obligations.

ARTICLE II
ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS, PRIORITY TAX CLAIMS, AND DIP CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, Priority Tax Claims, and DIP Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

A. Administrative Claims.

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtors or Plan Administrator, as applicable, to the extent an Allowed Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims) will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the amount of the unpaid portion of such Allowed Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, no later than 45 days after the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed

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Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Plan Administrator, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court; *provided* that any Allowed Administrative Claim that is an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of the Debtors or the Wind-Down Debtors; *provided*, *further*, that any Allowed Administrative Claim that is not an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of Purchasers; *provided*, that, Holders of Allowed Administrative Claims under section 507(a)(2) of the Bankruptcy Code shall be satisfied through payment in full in Cash of the due and unpaid portion of its Allowed Administrative Claim on the later of (i) the Effective Date (or as promptly as reasonably practicable thereafter) or (ii) as promptly as reasonably practicable after the date such Claim becomes due and payable

Except for Professional Fee Claims and DIP Claims, and unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Plan Administrator no later than the Administrative Claim Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order. Objections to such requests must be Filed and served on the Plan Administrator (if the Plan Administrator is not the objecting party) and the requesting party on or before the Administrative Claim Objection Bar Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, an order of the Bankruptcy Court that becomes a Final Order.

Except for Professional Fee Claims and DIP Claims, Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not file and serve such a request on or before the Administrative Claim Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, the Estates, the Wind-Down Debtors, the Plan Administrator, or the property of any of the foregoing, and such Administrative Claims shall be deemed released as of the Effective Date without the need for any objection from the Debtors, the Wind-Down Debtors or the Plan Administrator or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

B. Payment of Fees and Expenses under Financing Order.

On the Effective Date, and thereafter as invoiced, the Debtors shall pay all fees, expenses, disbursements, contribution or indemnification obligations, including without limitation, attorneys' and agents' fees, expenses, and disbursements incurred by each of the following, whether prior to or after the Petition Date and whether prior to or after the Effective Date, of the DIP Agents, the DIP Lenders, the First Lien Notes Trustee, the Term Loan Administrative Agent, and the Term Loan/First Lien Notes Collateral Agent, in each case to the extent payable or reimbursable under or pursuant to the Financing Order, the DIP Credit Agreement, the First Lien Notes Indenture, the Prepetition Security Agreement, or the Term Loan Credit Agreement, as applicable. Such fees, expenses, disbursements, contribution, or indemnification obligations shall constitute Allowed Administrative Claims. Nothing herein shall require the DIP Agents, DIP Lenders, the First Lien Notes Trustee, the Term Loan Administrative Agent, the Term Loan/ First Lien Notes Collateral Agent, or their respective Professionals, to file applications, a Proof of Claim, or otherwise seek approval of the Court as a condition to the payment of such Allowed Administrative Claims. For the avoidance of doubt, nothing herein shall be deemed to impair, discharge, or negatively impact or affect the rights of the DIP Agents, the First Lien Notes Trustee, the Term Loan Administrative Agent, and the Term Loan/First Lien Notes Collateral Agent to exercise their charging Liens pursuant to the terms of the DIP Credit Agreement, the First Lien Notes Indenture, the Prepetition Security Agreement, or the Term Loan Credit Agreement, as applicable.

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C. Professional Fee Claims.

1. Final Fee Applications and Payment of Professional Fee Claims.

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders. The Plan Administrator (or the authorized signatories to the Professional Fee Escrow Account, after consultation with the Plan Administrator) shall pay the amount of the Allowed Professional Fee Claims owing to the Professionals in Cash to such Professionals from funds held in the Professional Fee Escrow Account when such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court.

2. Professional Fee Escrow Account.

As soon as is reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, Claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Funds held in the Professional Fee Escrow Account shall not be considered property of the Estates, the Debtors, the Plan Administrator, or the Wind-Down Debtors.

The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Debtors or the Plan Administrator, as applicable, from the funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court; *provided* that the Debtors' and the Plan Administrator' s obligations to pay Allowed Professional Fee Claims shall not be limited nor be deemed limited to funds held in the Professional Fee Escrow Account and such Allowed Professional Fee Claims shall also be payable from the Wind-Down Reserve. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, any remaining funds held in the Professional Fee Escrow Account shall promptly be paid to the Wind-Down Debtors without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

3. Professional Fee Amount.

The Professionals shall provide a reasonable and good-faith estimate of their fees and expenses incurred in rendering services to the Debtors and/or the UCC before and as of the Effective Date projected to be outstanding as of the Effective Date, and shall deliver such estimate to the Debtors no later than five days before the anticipated Effective Date; *provided* that such estimate shall not be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of the Professional' s final request for payment of Professional Fee Claims and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated as of the Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account.

4. Post-Confirmation Fees and Expenses.

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Professionals, subject to the Wind-Down Budget. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtors or the Plan Administrator, as applicable, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court; *provided* that none of the Purchasers shall be liable or otherwise responsible for the payment of any Professional Fee Claims.

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D. Priority Tax Claims.

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of, and in exchange for, each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code; *provided* that any Allowed Priority Tax Claim that is an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of the Debtors or the Wind-Down Debtor.

E. DIP Claims.

As of the Effective Date, the DIP Claims shall be Allowed and deemed to be Allowed Claims in the full amount outstanding under the DIP Credit Agreement, including principal, interest, fees, costs, other charges, and expenses. Upon the satisfaction of the Allowed DIP Claims in accordance with the terms of this Plan and the Asset Purchase Agreement, or other such treatment as contemplated by this Article II.E of the Plan on the Effective Date all Liens and security interests granted to secure such obligations shall be automatically terminated and of no further force and effect without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

Except to the extent that a Holder of an Allowed DIP Claim agrees to a less favorable treatment, and solely with respect to that portion of a Holder' s Allowed DIP Claim that has not been satisfied in accordance with the Asset Purchase Agreement prior to the Effective Date, in full and final satisfaction, compromise, settlement, and release of, and in exchange for, each such unsatisfied portion of a Holder' s Allowed DIP Claim, on the Effective Date each such Holder of an Allowed DIP Claim shall receive, pursuant to the Sale Order and the Confirmation Order, its Credit Bid Pro Rata share of the Credit Bid Distributions. The DIP Claims shall be Allowed in the aggregate amount outstanding under the DIP Facility as of the Effective Date.

Pursuant to the DIP Credit Agreement, all distributions pursuant to this Article II.E shall be made to the DIP Agent for distributions to the DIP Lenders in accordance with the DIP Credit Agreement and DIP Credit Documents unless otherwise agreed upon in writing by the DIP Agent and the Debtors. The DIP Agent shall hold or direct distributions for the benefit of the Holders of DIP Claims. The DIP Agent shall retain all rights as DIP Agent under the DIP Credit Documents in connection with the delivery of the distributions to the DIP Lenders. The DIP Agent shall not have any liability to any person with respect to distributions made or directed to be made by such DIP Agent.

ARTICLE III
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Interests.

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that such Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of such Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

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The classification of Claims and Interests against the Debtors pursuant to the Plan is as follows:

Class	Claims and Interests	Status	Voting Rights
Class 1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 3	ABL Claims and Secured Swap Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 4	First Lien Claims	Impaired	Entitled to Vote
Class 5	[Reserved]		
Class 6	Second Lien Notes Claims	Impaired	Entitled to Vote
Class 7	Unsecured Notes Claims	Impaired	Entitled to Vote
Class 8	General Unsecured Claims	Impaired	Entitled to Vote
Class 9	Intercompany Claims	Unimpaired/ Impaired	Not Entitled to Vote (Deemed to Accept or Reject)
Class 10	Intercompany Interests	Unimpaired/ Impaired	Not Entitled to Vote (Deemed to Accept or Reject)
Class 11	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
Class 12	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)

B. Treatment of Claims and Interests.

Subject to Article IV hereof, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in full and final satisfaction, compromise, settlement, and release of, and in exchange for, such Holder' s Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors and the Holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the later of the Effective Date and the date such Holder' s Claim or Interest becomes an Allowed Claim or Allowed Interest or as soon as reasonably practicable thereafter.

1. Class 1 - Other Priority Claims

(a) *Classification*: Class 1 consists of all Other Priority Claims that are not Assumed Liabilities.

(b) *Treatment*: Each holder of an Other Priority Claim shall receive payment in full in Cash or other treatment rendering such Claim Unimpaired.

(i) payment in full in Cash of the unpaid portion of its Other Priority Claim on the later of the Effective Date and such date such Other Priority Claim becomes an Allowed Other Priority Claim; or

(ii) such other treatment rendering such Holder' s Allowed Other Priority Claim Unimpaired.

(c) *Voting*: Class 1 is Unimpaired and Holders of Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Other Priority Claims are not entitled to vote to accept or reject the Plan.

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2. Class 2 - Other Secured Claims

(a) *Classification*: Class 2 consists of all Other Secured Claims that are not Assumed Liabilities.

(b) *Treatment*: Each holder of an Allowed Other Secured Claim shall receive, at the option of the applicable Debtor or Plan Administrator, as applicable:

(i) payment in full in Cash;

(ii) delivery of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code;

(iii) Reinstatement of such Claim; or

(iv) such other treatment rendering such Claim Unimpaired.

(c) *Voting*: Class 2 is Unimpaired and Holders of Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Other Secured Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 - ABL Claims and Secured Swap Claims

(a) *Classification:* Class 3 consists of all ABL Claims and Secured Swap Claims against any Debtor.

(b) *Treatment*: To the extent a holder' s Allowed ABL Claim or Allowed Secured Swap Claim has not been paid in full, in Cash prior to the Effective Date, each holder of an Allowed ABL Claim or Allowed Secured Swap Claim shall receive payment in full, in Cash.

(c) *Voting:* Class 3 is Unimpaired and Holders of ABL Claims and Secured Swap Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Holders of ABL Claims and Secured Swap Claims are not entitled to vote to accept or reject the Plan.

4. Class 4 - First Lien Claims

(a) *Classification:* Class 4 consists of all First Lien Claims against any Debtor (excluding First Lien Deficiency Claims (if any) on account thereof).

(b) *Allowance*: The First Lien Claims shall be deemed Allowed in the amount of $1,571,414,062.50 (consisting of $1,102,153,062.50 in Term Loan Claims and $469,261,000.00 in First Lien Notes Claims), plus interest, fees, and other expenses and amounts provided for in the Term Loan Credit Agreement and First Lien Notes Indenture, incurred through the Effective Date, solely to the extent Allowed by the Bankruptcy Code.

(c) *Treatment:* On the Effective Date, each holder of an Allowed First Lien Claim shall receive, subject to the terms of the Minority First Lien Group Settlement: (a) pursuant to the Sale Transaction, on account of the Aggregate Credit Bid, its Credit Bid Pro Rata share of the Credit Bid Distributions subject to distribution under the Plan and (b) its Pro Rata share of any Cash remaining in the Wind-Down Reserve, Professional Fee Escrow, Administrative / Priority Claims Reserve once all Allowed Claims entitled to payment therefrom have been satisfied and no Disputed Claims that may be entitled to payment from such sources remain to be adjudicated.

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(d) *Voting:* Class 4 is Impaired under the Plan. Therefore, holders of First Lien Claims are entitled to vote to accept or reject the Plan.

5. [Reserved]

6. Class 6 - Second Lien Notes Claims

(a) *Classification:* Class 6 consists of all Second Lien Notes Claims against any Debtor (excluding Second Lien Notes Deficiency Claims (if any) on account thereof).

(b) *Allowance*: The Second Lien Notes Claims shall be deemed Allowed in the amount of $524,925,000.

(c) *Treatment:* Except to the extent that a Holder of an Allowed Second Lien Notes Claim agrees to less favorable treatment, on the Effective Date, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed Second Lien Notes Claim, each Holder of an Second Lien Notes Claim shall receive, up to the full amount of such Holder' s Allowed Second Lien Notes Claim, its Pro Rata share of any portion of the $1,500,000 of Cash distributed to the Second Lien Notes Trustee on the Effective Date remaining after the application of such Cash to the indemnification claims of the Second Lien Notes Trustee pursuant to the Second Lien Notes Indenture, plus its Pro Rata share of (taken together with the Unsecured Notes Claims, and General Unsecured Claims) any Cash remaining in the Wind-Down Reserve once all Allowed Claims entitled to payment therefrom have been satisfied, no Disputed Claims that may be entitled to payment from such sources remain to be adjudicated, and all First Lien Claims have been satisfied in full, plus its Pro Rata share (taken together with the Unsecured Notes Claims and General Unsecured Claims) of the Unsecured Claims Earnout Pool.

(d) *Voting:* Class 6 is Impaired under the Plan. Therefore, holders of Second Lien Notes Claims are entitled to vote to accept or reject the Plan.

7. Class 7 - Unsecured Notes Claims

(a) *Classification:* Class 7 consists of all Unsecured Notes Claims against any Debtor.

(b) *Allowance*: The Unsecured Notes Claims shall be deemed Allowed in the amount of $1,346,360,131.29.

(c) *Treatment:* Except to the extent that a Holder of an Allowed Unsecured Notes Claim agrees to less favorable treatment, on the Effective Date, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed Unsecured Notes Claim, each Holder of an Unsecured Notes Claim shall receive, up to the full amount of such Holder' s Allowed Unsecured Notes Claim, its Pro Rata share of any portion of the $750,000 of Cash distributed to the Unsecured Notes Trustees on the Effective Date remaining after the application of such Cash to the indemnification claims of the Unsecured Notes Trustee

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pursuant to the Unsecured Notes Indentures, plus its Pro Rata share (taken together with the Second Lien Notes Claims and General Unsecured Claims) of any Cash remaining in the Wind-Down Reserve once all Allowed Claims entitled to payment therefrom have been satisfied, no Disputed Claims that may be entitled to payment from such sources remain to be adjudicated, and all First Lien Claims have been satisfied in full, plus its Pro Rata share (taken together with the Second Lien Notes Claims, and General Unsecured Claims) of the Unsecured Claims Earnout Pool.

(d) *Voting:* Class 7 is Impaired under the Plan. Therefore, holders of Unsecured Notes Claims are entitled to vote to accept or reject the Plan.

8. Class 8 - General Unsecured Claims

(a) *Classification:* Class 8 consists of all General Unsecured Claims.

(b) *Treatment:* Except to the extent that a Holder of a General Unsecured Claim agrees to less favorable treatment (or such General Unsecured Claim is a First Lien Deficiency Claim), on the Effective Date, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive, (i) up to the full amount of such Holder' s General Unsecured Claim, its Pro Rata share (taken together with the Second Lien Notes Claims and Unsecured Notes Claims) of any Cash remaining in the Wind-Down Reserve once all Allowed Claims entitled to payment therefrom have been satisfied, no Disputed Claims that may be entitled to payment from such sources remain to be adjudicated, and all First Lien Claims have been satisfied in full, plus its Pro Rata share (taken together with the Second Lien Notes Claims and Unsecured Notes Claims) of the Unsecured Claims Earnout Pool; and (ii) a waiver of any preference actions arising under section 547 of the Bankruptcy Code or any comparable "preference" action arising under applicable non-bankruptcy law; *provided* that, upon the Effective Date, any potential recovery on account of any First Lien Deficiency Claim shall be deemed waived by Holders of First Lien Deficiency Claims and no Holder of a First Lien Deficiency Claim shall receive any recovery on behalf of such Claim.

(c) *Voting:* Class 8 is Impaired under the Plan. Therefore, holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

9. Class 9 - Intercompany Claims

(a) *Classification*: Class 9 consists of all Intercompany Claims.

(b) *Treatment*: Each Intercompany Claim shall be, at the option of the Debtors, setoff, contributed, distributed, compromised, settled, Reinstated, canceled and released without any distribution, or otherwise addressed in a manner determined by the Debtors.

(c) *Voting*: Holders of Claims in Class 9 are conclusively deemed to have accepted or rejected the Plan pursuant to section 1126(f) or section 1126(g) of the Bankruptcy Code, respectively. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

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10. Class 10 - Intercompany Interests

(a) *Classification*: Class 10 consists of all Intercompany Interests.

(b) *Treatment*: Each Intercompany Interest shall be, at the option of the Debtors, contributed, distributed, eliminated via merger or other corporate transaction, Reinstated, canceled and released without any distribution, or otherwise addressed in a manner determined by the Debtors.

(c) *Voting*: Holders of Interests in Class 10 are conclusively deemed to have accepted or rejected the Plan pursuant to section 1126(f) or section 1126(g) of the Bankruptcy Code, respectively. Therefore, Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

11. Class 11 - Existing Equity Interests

(a) *Classification*: Class 11 consists of all Existing Equity Interests.

(b) *Treatment*: Existing Equity Interests will be canceled, released, and extinguished, and will be of no further force or effect. Each holder of an Interest will not receive any distribution on account of such Interest.

(c) *Voting*: Class 11 is Impaired. Holders of Existing Equity Interests are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

12. Class 12 - Section 510(b)

(a) *Classification:* Class 12 consists of all Section 510(b) Claims.

(b) *Allowance*: Notwithstanding anything to the contrary herein, a Section 510(b) Claim, if any such Claim exists, may only become Allowed by Final Order of the Bankruptcy Court. The Debtors are not aware of any valid Section 510(b) Claim and believe that no such Section 510(b) Claim exists.

(c) *Treatment:* Section 510(b) Claims shall be discharged, cancelled, released, and extinguished without any distribution to holders of such Claims.

(d) *Voting:* Class 12 is Impaired and Holders (if any) of Allowed Section 510(b) Claims are conclusively deemed to have rejected the Plan. Therefore, Holders (if any) of Section 510(b) Claims are not entitled to vote to accept or reject the Plan.

C. Special Provision Governing Unimpaired Claims.

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' rights in respect of any Claims that are Unimpaired, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Claims that are Unimpaired; *provided* that the Reinstatement or other treatment of such Claims shall not be inconsistent with the Asset Purchase Agreement. Unless otherwise Allowed, Claims that are Unimpaired shall remain Disputed Claims under the Plan.

D. Elimination of Vacant Classes.

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

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E. Voting Classes, Presumed Acceptance by Non-Voting Classes.

If a Class contains Claims or Interests eligible to vote and no holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the holders of such Claims or Interests in such Class shall be deemed to have accepted the Plan.

F. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article XII of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

G. Controversy Concerning Impairment.

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Subordinated Claims.

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Plan Administrator reserve the right to reclassify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

ARTICLE IV
MEANS FOR IMPLEMENTATION OF THE PLAN

A. General Settlement of Claims and Interests.

As discussed in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute and be deemed a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court' s approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates. Subject to Article VI hereof, all distributions made to Holders of Allowed Claims in any Class are intended to be and shall be final.

B. Restructuring Transactions

On the Effective Date (or before the Effective Date, as specified in the Restructuring Transactions Memorandum), the Debtors shall take all actions set forth in the Restructuring Transactions Memorandum, and enter into any transaction and take any reasonable actions as may be necessary or appropriate to effect the transactions

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described herein, subject in all respects to the terms set forth herein, including, as applicable: (i) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable law and any other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable Entities agree; (iii) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable state or provincial Law; and (iv) all other actions that the Debtors and the Purchasers determine to be necessary or appropriate in connection with the Consummation of the Sale Transaction, including, among other things, making filings or recordings that may be required by applicable law in connection with the Plan and authorizing and directing the Term Loan/First Lien Notes Collateral Agent to effectuate the Credit Bid in accordance with the Asset Purchase Agreement and Sale Order and any assignees of the Credit Bid, if applicable, are bound by the terms and provisions of the direction to the Term Loan/First Lien Notes Collateral Agent including, among other things, the Credit Bid Distributions and Credit Bid Pro Rata.

1. Formation of New PropCo.

On or prior to the Effective Date, PropCo and certain direct or indirect subsidiaries shall be formed for the purpose of acquiring all of PropCo Acquired Assets, assuming all of the PropCo Assumed Liabilities, and issuing the New PropCo Securities pursuant to the Plan.

It is intended that PropCo qualify as a "liquidating trust" within the meaning of Treasury Regulations section 301.7701-4(d). For all federal income tax purposes, the beneficiaries of PropCo will be treated as grantors and owners thereof and will be treated as if they had received an interest in the PropCo Acquired Assets, subject to the PropCo Assumed Liabilities, and contributed the PropCo Acquired Assets, subject to the PropCo Assumed Liabilities, to PropCo in exchange for the New PropCo Securities. PropCo will have no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of PropCo. The PropCo Trustee shall be the trustee of PropCo and shall have the rights, powers, and obligations set forth in PropCo Trust Agreement.

2. Transfer of Master Lease Agreement and PropCo Acquired Assets to PropCo.

On the Effective Date, pursuant to the Asset Purchase Agreement, the Debtors and any Non-Debtor Affiliates that own assets that are PropCo Acquired Assets shall convey, assign, transfer, and deliver all such PropCo Acquired Assets to PropCo.

On the Effective Date, pursuant to the Asset Purchase Agreement, and in accordance with the terms of the Master Lease Agreement, the Debtors' interests in the Master Lease Agreement shall be assigned to, and OpCo Purchaser shall consent to such assignment of such interests to, PropCo. In connection with such assignment, the parties to the Master Lease Agreement shall, on or prior to the Effective Date, agree upon the "Pre-Agreed Severed Lease Form" and within 30 days of OpCo Closing agree upon the "Pre-Agreed PSA Form" each in accordance with the Master Lease Agreement (as each term is defined therein).

C. Sources of Consideration for Plan Distributions.

All amounts necessary for the Debtors, Wind-Down Debtors, OpCo Purchaser, and the PropCo Purchaser, as applicable, to make payments or distributions pursuant hereto shall be, in each case subject to the terms of the Asset Purchase Agreement and the Sale Order) obtained from the proceeds of the Exit ABL Facility, the Exit FILO Facility, Cash of the Debtors, and the OpCo-Company Cash Payment. Unless otherwise agreed, distributions required by this Plan on account of Allowed Claims that are Assumed Liabilities under the Asset Purchase Agreement shall be the sole responsibility of the OpCo Purchaser or PropCo Purchaser, as applicable; *provided* that any Allowed Administrative Claim that is not an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of Purchasers.

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1. Payment of ABL Claims.

To the extent the ABL Claims have not been satisfied prior to Confirmation of the Plan from proceeds of the OpCo-Company Cash Payment, such ABL Claims shall be paid in full, in Cash, upon the Effective Date.

2. Creation of the Administrative / Priority Claims Reserve and the Wind-Down Reserve.

On or before the Effective Date, each of the Administrative / Priority Claims Reserve and Wind-Down Reserve shall be funded in accordance with the Asset Purchase Agreement, the Sale Order, and section 1129 of the Bankruptcy Code.

3. Payment of Cure Costs.

The Debtors shall pay all Cure Costs, if any, pursuant to sections 365 or 1123 of the Bankruptcy Code and in accordance with the Asset Purchase Agreement and Sale Order.

4. The New PropCo Securities

On the Effective Date, PropCo is authorized to issue or cause to be issued and shall, as provided for in the Restructuring Transactions Memorandum, issue the New PropCo Securities for distribution to the Holders of Allowed DIP Claims and Allowed First Lien Claims in accordance with the terms of this Plan without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule, or the vote, consent, authorization, or approval of any Person. The New PropCo Securities shall be issued and distributed free and clear of all Liens, Claims, and other Interests. All of the New PropCo Securities issued pursuant to the Plan, as contemplated by the Sale Transaction, shall be duly authorized and validly issued.

D. Plan Administrator and the Wind-Down Debtors

1. Vesting of Assets

Except as otherwise provided in the Plan, or any agreement, instrument, or other document incorporated herein or therein, on the Effective Date, the Excluded Assets of the Debtors shall vest in the Wind-Down Debtors for the purpose of liquidating the Estates, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, the Wind-Down Debtors may, at the direction of the Plan Administrator, and subject to the Asset Purchase Agreement, the Sale Order, and the Confirmation Order, use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

2. Wind-Down Debtors

On and after the Effective Date, the Wind-Down Debtors shall continue in existence for purposes of (a) resolving Disputed Claims, (b) making distributions on account of Allowed Claims as provided hereunder, (c) establishing and funding the Administrative / Priority Claims Reserve and the Wind-Down Reserve, (d) enforcing and prosecuting Claims, interests, rights, and privileges under the Causes of Action on the Schedule of Retained Causes of Action in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith, (e) filing appropriate tax returns, (f) complying with its continuing obligations under the Asset Purchase Agreement, if any, (g) liquidating all assets of the Wind-Down Debtors, and (h) otherwise administering the Plan. The Wind-Down Debtors shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (i) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court and (ii) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

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3. Plan Administrator

As set forth below, the Plan Administrator shall act for the Wind-Down Debtors in the same fiduciary capacity as applicable to a board of managers, directors, and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same) and retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under this Plan in accordance with the Wind-Down and as otherwise provided in the Confirmation Order. On the Effective Date, the authority, power, and incumbency of the Persons acting as managers, directors, and officers of the Wind-Down Debtors shall be deemed to have resigned, and the Plan Administrator shall be appointed as the sole manager, sole director, and sole officer of the Wind-Down Debtors, and shall succeed to the powers of the Wind-Down Debtors' managers, directors, and officers.

From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Wind-Down Debtors as further described in Article VII hereof. The Plan Administrator shall have the authority to sell, liquidate, or otherwise dispose of any and all of the Wind-Down Debtors' assets without any additional notice to or approval from the Bankruptcy Court.

4. Board of the Debtors

As of the Effective Date, the existing board of directors or managers, as applicable, of the Debtors shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, managers, shareholders, or members, and any remaining officers, directors, managers, or managing members of any Debtor shall be dismissed without any further action required on the part of any such Debtor, the equity holders of the Debtors, the officers, directors, or managers, as applicable, of the Debtors, or the members of any Debtor. Subject in all respects to the terms of this Plan, the Debtors shall be dissolved as soon as practicable on or after the Effective Date, but in no event later than the closing of the Chapter 11 Cases.

As of the Effective Date, the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to its affairs. Subject in all respects to the terms of this Plan, the Plan Administrator shall have the power and authority to take any action necessary to wind-down and dissolve any of the Debtors, and shall: (a) file a certificate of dissolution for any of the Debtors, together with all other necessary corporate and company documents, to effect the dissolution of any of the Debtors under the applicable laws of each applicable Debtor' s state of formation; and (b) complete and file all final or otherwise required federal, state, and local tax returns and shall pay taxes required to be paid for any of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors or their Estates for any tax incurred during the administration of such Debtor' s Chapter 11 Case, as determined under applicable tax laws; and (c) represent the interests of the Debtors or the Estates before any taxing authority in all tax matters, including any action, suit, proceeding, or audit.

The filing by the Plan Administrator of any of the Debtors' certificate of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of the Debtors or any of their Affiliates.

5. Tax Returns

After the Effective Date and subject to the Asset Purchase Agreement, the Plan Administrator shall complete and file all final or otherwise required federal, state, provincial, and local tax returns for each of the Debtors and the Wind-Down Debtors.

6. Dissolution of the Wind- Down Debtors

Upon a certification to be Filed with the Bankruptcy Court by the Plan Administrator of all distributions having been made and completion of all its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtors shall be deemed to be dissolved without any further action by the Plan Administrator, including the filing of any documents with the secretary of state for the state in which the Debtors are formed or any other jurisdiction. Notwithstanding the foregoing, the Plan Administrator shall retain the authority to take all necessary actions to dissolve the Debtors in, and withdraw the Debtors from, applicable states and provinces to the extent required by applicable law.

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E. Release of Liens

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors' Estates that have not been previously released shall be fully released, settled, and compromised, and the holder of such mortgages, deeds of trust, Liens, pledges, or other security interest against any property of the Debtors' Estates shall be authorized to take such actions as may be reasonably requested by the Debtors to evidence such releases, at the sole expense of the Debtors or Wind-Down Debtors, as applicable.

F. Cancellation of Existing Securities and Agreements.

On the Effective Date, except as otherwise specifically provided for in the Plan or the Asset Purchase Agreement: (1) the obligations under the DIP Credit Documents, First Lien Debt Documents, the ABL Credit Agreement, and any other certificate, Security, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors or giving rise to any Claim or Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Debtors that are Reinstated pursuant to the Plan) shall be cancelled, except as set forth herein, and the Wind-Down Debtors shall not have any continuing obligations thereunder; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligation of or ownership interest in the Debtors that are specifically Reinstated pursuant to the Plan) shall be released.

Notwithstanding the foregoing, (a) no Executory Contract or Unexpired Lease (i) that has been, or will be, assumed pursuant to section 365 of the Bankruptcy Code or (ii) relating to a Claim that was paid in full prior to the Effective Date, shall be terminated or cancelled on the Effective Date, (b) the First Lien Debt Documents, the Second Lien Notes Indenture, the Unsecured Notes Indentures, and the ABL Credit Agreement shall continue in effect solely for the purpose of (i) allowing Holders of the First Lien Claims and ABL Claims, as applicable, the First Lien Notes Trustee, the Second Lien Notes Trustee, and the Unsecured Notes Trustee to receive the distributions provided for under the Plan, (ii) allowing the Term Loan Administrative Agent, the Term Loan/First Lien Notes Collateral Agent, the First Lien Notes Trustee, the Second Lien Notes Trustee, the Unsecured Notes Trustee, and the ABL Agent to receive or direct distributions from the Debtors and to make further distributions to the Holders of such Claims on account of such Claims, as set forth in Article VI.A of the Plan, (iii) preserving all rights, including rights of enforcement, of the Term Loan Administrative Agent, the First Lien Notes Trustee, the Term Loan/First Lien Notes Collateral Agent, the Second Lien Notes Trustee, the Unsecured Notes Trustee, and the ABL Agent to indemnification or contribution pursuant and subject to the terms of the ABL Credit Agreement and the First Lien Debt Documents in respect of any Claim or Cause of Action asserted against the Term Loan Administrative Agent, and the First Lien Notes Trustee, as applicable, (iv) permitting each of the Term Loan/First Lien Notes Collateral Agent, the First Lien Notes Trustee, the Second Lien Notes Trustee, the Unsecured Notes Trustee, ABL Agent and the Term Loan Administrative Agent to appear in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court, and (v) preserving any rights of the DIP Agent, DIP Collateral Agent, First Lien Notes Trustee, Term Loan Administrative Agent, Term Loan/First Lien Notes Collateral Agent, Unsecured Notes Trustees, Second Lien Notes Trustees to payment of fees, expenses, and indemnification obligations as against any money or property distributable to the Holders under the relevant indenture, Prepetition Security Agreement, Term Loan Credit Agreement, or DIP Credit Agreement, including any rights to priority of payment and/or to exercise charging Liens.

Each of the ABL Agent and the Term Loan Administrative Agent shall be released and shall have no further obligation or liability except as provided in the Plan and Confirmation Order, and after the performance by the ABL Agent and the Term Loan Administrative Agent and their respective representatives and Professionals of any obligations and duties required under or related to the Plan or Confirmation Order, each of the ABL Agent and the Term Loan Administrative Agent shall be relieved of and released from any obligations and duties arising thereunder.

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Except as provided in this Plan, on the Effective Date, the DIP Agent and its respective agents, successors, and assigns shall be automatically and fully released of all of their duties and obligations associated with the DIP Credit Documents. The commitments and obligations, if any, of the DIP Lenders to extend any further or future credit or financial accommodations to any of the Debtors, any of their respective subsidiaries, or any of their respective successors or assigns under the DIP Credit Documents, as applicable, shall fully terminate and be of no further force or effect on the Effective Date.

G. Corporate Action.

Upon the Effective Date, all actions contemplated under the Plan, regardless of whether taken before, on, or after the Effective Date, shall be deemed authorized and approved in all respects, including: (1) selection of the Plan Administrator; (2) implementation of the Restructuring Transactions; (3) Consummation of the PropCo Sale and (4) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan or deemed necessary or desirable by the Debtors, before, on, or after the Effective Date involving the corporate structure of the Debtors or the Wind-Down Debtors, and any corporate action required by the Debtors or the Wind-Down Debtors in connection with the Plan or corporate structure of the Debtors or the Wind-Down Debtors shall be deemed to have occurred and shall be in effect on the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Plan Administrator. Before, on, or after the Effective Date, the appropriate officers of the Debtors or the Plan Administrator, as applicable, shall be authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Debtors or the Wind-Down Debtors, to the extent not previously authorized by the Bankruptcy Court. The authorizations and approvals contemplated by this Article IV.G shall be effective notwithstanding any requirements under non-bankruptcy law.

H. New Organizational Documents.

The New Organizational Documents will prohibit the issuance of non-voting Equity Securities to the extent required by section 1123(a)(6) of the Bankruptcy Code. After the Effective Date, the New Organizational Documents may be amended or restated as permitted by such documents and the Laws of their respective states, provinces, or countries of incorporation or organization.

I. Effectuating Documents; Further Transactions.

On and after the Effective Date, the Plan Administrator may issue, execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the Restructuring Transactions, the Sale Transaction, and the instruments issued pursuant to the Plan in the name of and on behalf of the Wind-Down Debtors, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

J. Section 1146 Exemption.

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code and applicable law, any transfers of property under the Plan (including pursuant to the Asset Purchase Agreement) or pursuant to (1) the issuance, distribution, transfer, or exchange of any debt, Equity Security, or other interest in the Debtors or the Wind-Down Debtors, including in accordance with the Asset Purchase Agreement, (2) the Restructuring Transactions, (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means, (4) the making, assignment, or recording of any lease or sublease, or (5) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan (including the Sale Transaction), shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental

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officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

K. Exemption from Securities Act Registration

The issuance of New PropCo Securities under the Plan is expected to be exempt pursuant to section 1145 of the Bankruptcy Code. Thus, the New PropCo Securities to be issued under the Plan (a) would not be "restricted securities" as defined in Rule 144(a)(3) under the Securities Act, and (b) would be freely tradable and transferable by any initial recipient thereof that (i) is not an "Affiliate" of the Debtors as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an "Affiliate" within 90 days of such transfer, and (iii) is not an entity that is an "underwriter" as defined in subsection (b) of Section 1145 of the Bankruptcy Code. Should PropCo elect on or after the Effective Date to reflect any ownership of the New PropCo Securities to be issued under the Plan through the facilities of DTC, PropCo need not provide any further evidence other than the Plan or the Confirmation Order with respect to the treatment of the New PropCo Securities (to the extent they are deemed to be securities) to be issued under the Plan under applicable securities laws. DTC shall be required to accept and conclusively rely upon the Plan and Confirmation Order in lieu of a legal opinion regarding whether the New PropCo Securities (to the extent they are deemed to be securities) to be issued under the Plan are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services. Notwithstanding anything to the contrary in the Plan, no entity (including, for the avoidance of doubt, DTC) may require a legal opinion regarding the validity of any transaction contemplated by the Plan, including, for the avoidance of doubt, whether the New PropCo Securities (to the extent they are deemed to be securities) to be issued under the Plan are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services. Notwithstanding any policies, practices, or procedures of DTC, DTC shall cooperate with and take all actions reasonably requested by a Disbursing Agent or an indenture trustee to facilitate distributions to Holders of Allowed Claims without requiring that such distribution be characterized as repayments of principal or interest. No Disbursing Agent or indenture trustee shall be required to provide indemnification or other security to DTC in connection with any distributions to Holders of Allowed Claims through the facilities of DTC.

To the extent that section 1145 of the Bankruptcy Code is inapplicable, the offering, issuance, exchange, or distribution of any securities pursuant to the Plan is or shall be conducted in a manner that is exempt from the registration requirements of section 5 of the Securities Act, pursuant to section 4(a)(2) of the Securities Act and/or the regulations promulgated thereunder (including Regulation D). To the extent such securities are issued in reliance on Section 4(a)(2) of the Securities Act or Regulation D thereunder, each will be "restricted securities" subject to resale restrictions and may be resold, exchanged, assigned or otherwise transferred only pursuant to registration, or an applicable exemption from registration under the Securities Act and other applicable law. In that regard, each recipient shall be required to make customary representations to the Debtors including that each is an "accredited investor" (within the meaning of Rule 501(a) of the Securities Act) or a qualified institutional buyer (as defined under Rule 144A promulgated under the Securities Act).

L. Preservation of Causes of Action.

In accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Article VII and Article X hereof and the Asset Purchase Agreement, the Plan Administrator shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action and notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan, other than Avoidance Actions and the Causes of Action (a) that constitute OpCo Acquired Assets or PropCo Acquired Assets, (b) released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article X, or (c) waived in accordance with Article IV.L which in the case of the foregoing (b) or (c) shall be deemed released and waived by the Debtors and the Wind-Down Debtors as of the Effective Date.

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The Plan Administrator may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Wind-Down Debtors. The Plan Administrator shall retain and may exclusively enforce any and all such Causes of Action. The Plan Administrator shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Plan Administrator will not pursue any and all available Causes of Action against it, except as assigned or transferred to the Purchaser Group in accordance with the Asset Purchase Agreement or otherwise expressly provided in the Plan, including this Article IV and Article X of the Plan. Unless any such Causes of Action against an Entity are expressly waived (including pursuant to Article IV.L of the Plan), relinquished, exculpated, released, compromised, assigned, or transferred to the Purchaser Group in accordance with the Asset Purchase Agreement, or settled in the Plan or a Final Order, the Plan Administrator expressly reserves all such Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, Claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

M. Pension Plan.

With respect to the Pension Plan, no provision of the Disclosure Statement, Plan, Confirmation Order, or section 1141 of the Bankruptcy Code shall be construed to discharge, release, or relieve any parties in interest (as defined in 29 U.S.C. § 1002(14)) to the Pension Plan from liabilities or requirements that are both (i) described within 29 U.S.C. §§ 1101 – 1114 and (ii) enforced solely by the PBGC or the Pension Plan. PBGC and the Pension Plan will not be enjoined or precluded from enforcing such liability with respect to the Pension Plan as a result of any provision of the Disclosure Statement, Plan, Confirmation Order, or section 1141 of the Bankruptcy Code.

ARTICLE V
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases.

Subject to the Sale Order (including the Assignment Procedures (as defined in the Sale Order)), on the Effective Date, except as otherwise provided herein, each Executory Contract or Unexpired Lease not previously assumed, assumed and assigned, or rejected shall be deemed automatically rejected by the applicable Debtor, unless otherwise agreed by the applicable lessor, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than those that: (1) are identified on the Schedule of Assigned Contracts or the Potentially Assigned Contracts Lists (as defined in the Sale Order); (2) have been previously assumed or rejected by the Debtors pursuant to the Assignment Procedures or any other Bankruptcy Court order; (3) are the subject of a Filed motion to assume, assume and assign, or reject such Executory Contract or Unexpired Lease (or of a Filed objection with respect to the proposed assumption and assignment of such contract) that is pending on the Effective Date; or (4) are a contract, release, or other agreement or document entered into in connection with the Plan; *provided* that with respect to any Unexpired Leases designated for non-assignment at the expiration of the OpCo Designation Rights Period or PropCo Designation Rights Period, as applicable, the effective date of rejection of such Unexpired Leases, unless otherwise agreed by the applicable lessor or pursuant to an order of the Bankruptcy Court, will be deemed to occur on the earlier of (i) the Effective Date and (ii) the date that the Debtors in writing (email sufficient) surrender the premises to the landlord, confirm the Debtors are unequivocally relinquishing possession and control of the Premises, and return the keys, key codes, or security codes, if any, to the affected landlord, or notify the affected landlord in writing (email sufficient) that the keys, key codes, and security codes, if any, are not available, but the landlord may rekey the leased premises; *provided further*, that, on the date the Debtors surrender the premises as set forth in subsection (ii) above, all property remaining in the Premises will be deemed abandoned free and clear of any interests, liens, and encumbrances and Landlords may dispose of such property without further notice or court order, unless otherwise agreed by the applicable lessors. Notwithstanding anything to the contrary in the Plan or Confirmation Order, the rights of counterparties to Unexpired Leases of nonresidential real property to object to the continued possession of such leased property, including the ability to conduct GOB sales on the properties, or failure

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to comply with any other lease terms or obligations, including payment of rents and charges and insurance obligations, in each case related to such Unexpired Lease following entry of the Confirmation Order are expressly preserved, and the rights of such counterparties to request such objection be heard on shortened notice are preserved.

Entry of the Confirmation Order shall constitute an order of the Bankruptcy Court approving, subject to and upon the occurrence of the Effective Date, the assumptions, assumptions and assignments, or rejections of the Executory Contracts and Unexpired Leases as set forth in the Plan, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, except as otherwise provided in the Plan, the Confirmation Order or the Sale Order. Any Filed motions, Executory Contracts and Unexpired Leases noticed for assumption and assignment with a pending objection that has not yet been resolved, to assume, assume and assign, or reject any Executory Contracts or Unexpired Leases that are pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order but may be withdrawn, settled, or otherwise prosecuted by the Plan Administrator, with any such disposition to be deemed to effect an assumption, assumption and assignment, or rejection, as applicable, as of the Effective Date.

Subject to the Sale Order and the Asset Purchase Agreement, each Executory Contract and Unexpired Lease assumed pursuant to the Plan or by any order of the Bankruptcy Court, which has not been assigned to a third party on or prior to the Effective Date, shall revest in the Debtors and be fully enforceable by the Plan Administrator in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal Law.

Subject to the Sale Order, to the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Notwithstanding anything to the contrary in the Plan, the Debtors or the Plan Administrator, as applicable, reserve the right to alter, amend, modify, or supplement (i) the Schedule of Rejected Executory Contracts and Unexpired Leases (a) with respect to OpCo Available Contracts, with the consent of the OpCo Purchaser, at any time up to the earlier of (x) 90 days following the OpCo Closing Date, (y) February 28, 2021, and (z) solely with respect to unexpired Leases for nonresidential real property, the deadline set forth in section 365(d)(4) of the Bankruptcy Code, consistent with the Asset Purchase Agreement (the "OpCo Designation Rights Period") and (b) with respect to PropCo Available Contracts (as defined in the Asset Purchase Agreement), with the consent of the PropCo Purchaser, at any time up to the earlier of (a) the Effective Date, (b) PropCo Closing, and (c) solely with respect to unexpired Leases for nonresidential real property, the deadline set forth in section 365(d)(4) of the Bankruptcy Code (the "PropCo Designation Rights Period"), or (ii) the Schedule of PropCo Assigned Contracts, with the consent of the PropCo Purchaser, at any time up to the expiration of the PropCo Designation Rights Period, consistent with the Asset Purchase Agreement. Notwithstanding anything to the contrary in this Article V.A, during the OpCo Designation Rights Period, the Debtors may update or correct the OpCo Available Contracts or the Potentially Assigned Contracts Lists (as defined in the Sale Order) after the Effective Date to include any Executory Contract inadvertently excluded from such schedule; *provided* that the foregoing shall not apply to Unexpired Leases of non-residential real property.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court within 30 days after the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (2) the effective date of such rejection under section 365 of the Bankruptcy Code, or (3) the Effective Date. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Estates, the Wind-Down Debtors, the Plan Administrator, or the Purchaser Group, or the property of any of the foregoing Entities without the need for any objection by the Plan Administrator or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the**

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rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.B and may be objected to in accordance with the provisions of Article IX of the Plan and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

Unless the parties to such Executory Contracts or Unexpired Leases may otherwise agree, any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment in Cash of the Cure Costs, on, or as promptly as reasonably practicable thereafter, the Effective Date; *provided* that the Cure Costs in connection with the Assigned Contracts shall be satisfied in accordance with the terms in the Asset Purchase Agreement and the Sale Order (including the Assignment Procedures). In the event of a dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the Debtors, the Purchaser Group, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, any such dispute shall be resolved and Cure Costs paid as set forth in the Sale Order (including the Assignment Procedures) or Confirmation Order.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan, the Asset Purchase Agreement, the Sale Order or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the Effective Date of assumption; *provided* that notwithstanding anything in this Plan, the Asset Purchase Agreement, the Sale Order, the Plan Supplement, or otherwise to the contrary, any non-Debtor party to any such Executory Contract or Unexpired Lease shall be entitled to receive, and nothing herein shall release or result in the satisfaction of such party' s right to receive, payment in full of all Cure Costs and all amounts that have accrued or otherwise arisen as of the Effective Date (but are not in default as of the Effective Date) with respect to any Executory Contract or Unexpired Lease.

Notwithstanding anything to the contrary in the Sale Order or the Plan (including the releases set forth herein or in the Confirmation Order), and subject to any arrangement between the respective parties to the Asset Purchase Agreement as to such liability, with respect to any assumed and assigned Unexpired Lease of nonresidential real property or any Restrictive Covenant, the Debtors, the Wind Down Debtors, the OpCo Purchaser and the PropCo Purchaser, as applicable, shall be liable to the counterparty to such Unexpired Lease or Restrictive Covenant to the extent provided for in the Asset Purchase Agreement or other agreement with the applicable counterparty or as determined by order of the Bankruptcy Court for the following: (1) amounts owed under any assumed and assigned Unexpired Lease of nonresidential real property or Restrictive Covenant that are unbilled or not yet due as of the effective date of the assignment, regardless of when such amounts accrued, such as common area maintenance, insurance, taxes, and similar charges; (2) any regular or periodic adjustment or reconciliation of charges under the assumed and assigned Unexpired Lease of nonresidential real property or Restrictive Covenant that are not due or have not been determined as of the date of the effective date of the assignment; (3) any percentage rent that may come due under the assumed and assigned Unexpired Lease of nonresidential real property; (4) indemnification obligations, if any, up to the date of the effective date of the assignment; and (5) any unpaid Cure Costs under the assumed and assigned Unexpired Lease of nonresidential real property, each calculated in accordance with the terms of any applicable amendment to such Unexpired Lease of nonresidential real property. Nothing in this Plan shall impair the right of a counterparty to an Executory Contract or Unexpired Lease to assert a claim for rejection damages in accordance with section 365 of the Bankruptcy Code, or receive an allowed General Unsecured Claim on account of such rejection damages, and nothing in this Plan or the Confirmation Order shall impair the right of a counterparty to an Unexpired Lease of nonresidential real property to object to the assumption and assignment of such Unexpired Lease on grounds of inadequate assurance of future performance.

Except as otherwise agreed by any of the Debtors and any non-Debtor counterparty to any Executory Contract or Unexpired Lease, following the assumption of any such Executory Contract or Unexpired Lease, any Filed Proofs of Claim with respect to the Executory Contract or Unexpired Lease are deemed to be disallowed and expunged upon full satisfaction of monetary defaults and, to the extent required under section 365 of the Bankruptcy Code, satisfaction of non-monetary defaults.

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D. Preexisting Obligations to the Debtors under Executory Contracts and Unexpired Leases.

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan, the Asset Purchase Agreement, or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtors (for themselves and for their successors) expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to rejected Executory Contracts or Unexpired Leases.

E. Indemnification Provisions.

All Indemnification Provisions, consistent with applicable law, currently in place (whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for the current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other Professionals of the Debtors, as applicable, shall be Reinstated and remain intact, irrevocable, and shall survive the Effective Date on terms no less favorable to such current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other Professionals of the Debtors than the Indemnification Provisions in place prior to the Effective Date.

The Debtors shall maintain tail coverage under any directors' and officers' insurance policies for the six-year period following the Effective Date on terms no less favorable than under, and with an aggregate limit of liability no less than the aggregate limit of liability under, the directors' and officers' existing insurance policies. In addition to such tail coverage, the directors' and officers' insurance policies shall remain in place in the ordinary course during the Chapter 11 Cases.

The Debtors shall not terminate or otherwise reduce the coverage under any directors' and officers' insurance policies (including the "tail policy") in effect prior to the Effective Date, and any directors and officers of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such directors and/or officers remain in such positions after the Effective Date. Notwithstanding anything herein to the contrary, the Debtors shall retain the ability to supplement such directors' and officers' insurance policies as the Debtors deem necessary, including purchasing any tail coverage.

F. Modifications, Amendments, Supplements, Restatements, or Other Agreements.

Unless otherwise provided in the Plan, the Sale Order, or the Asset Purchase Agreement, each assumed and assigned Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including easements, reciprocal easement agreements, construction operating and reciprocal easement agreements, operating or redevelopment agreements, covenants, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

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G. Reservation of Rights.

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of PropCo Assigned Contracts or the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan or the Plan Supplement, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any of the Debtors has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Plan Administrator, as applicable, shall have 45 days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease under the Plan or the Sale Order. Following the expiration of the OpCo Designation Rights Period and the PropCo Designation Rights Period, as applicable, the Debtors may not subsequently reject any Unexpired Lease previously designated as assumed or assumed and assigned and may not assume or assume and assign an Unexpired Lease previously designated as rejected on the Schedules of Assumed and Rejected Contracts absent the consent of the applicable lessor or order of the Bankruptcy Court. For the avoidance of doubt, and notwithstanding anything to the contrary in the Plan or Confirmation Order, a final and timely designation with respect to all Unexpired Leases of nonresidential real property will be made by the earlier of (i) the deadline set forth in section 365(d)(4)(A)(i) of the Bankruptcy Code; or (ii) the date of the entry of the Confirmation Order.

H. Nonoccurrence of Effective Date.

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

I. Contracts and Leases Entered Into After the Petition Date.

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor (but excluding any Assigned Contracts), will be performed by the applicable Debtor or, after the Effective Date, the Wind-Down Debtors, liable thereunder in the ordinary course of their business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases but excluding any Executory Contracts or Unexpired Leases that have been rejected as of the date of entry of the Confirmation Order) will survive and remain unaffected by entry of the Confirmation Order.

J. Sale Order Assignment Procedures.

Nothing contained in the Plan or the Confirmation Order constitutes or shall be construed as any modification or amendment of the Sale Order or the Assignment Procedures attached thereto.

ARTICLE VI
PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in the Plan, on the Initial Distribution Date (or if a Claim is not an Allowed Claim or Allowed Interest on the Initial Distribution Date, on the next Quarterly Distribution Date after such Claim or Interest becomes an Allowed Claim or Allowed Interest, or as soon as reasonably practicable thereafter), or as soon as is reasonably practicable thereafter, each Holder of an Allowed Claim shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims or Disputed Interests, distributions on account of any such Disputed Claims or Disputed Interests shall be made pursuant to the provisions set forth in Article IX hereof. Except as otherwise provided in the Plan, Holders of Claims or Interests shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

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B. Distributions on Account of Obligations of Multiple Debtors

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan, *provided* that Claims held by a single entity at different Debtors that are not based on guarantees or joint and several liability shall be entitled to the applicable distribution for such Claim at each applicable Debtor. Any such Claims shall be released pursuant to Article X of the Plan and shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code. For the avoidance of doubt, this shall not affect the obligation of each and every Debtor to pay fees payable pursuant to section 1930(a) of the Judicial Code until such time as a particular Chapter 11 Case is closed, dismissed, or converted, whichever occurs first.

C. Distributions Generally

Except as otherwise provided herein, distributions under the Plan shall be made by the Disbursing Agent. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Wind-Down Debtors.

Notwithstanding any provision of the Plan to the contrary, distributions to Holders of DIP Claims shall be made to or at the direction of the DIP Agent and distributions to Holders of First Lien Claims shall be made to or at the direction of each of the Term Loan Administrative Agent or the First Lien Notes Trustee, as applicable, each of which shall act as Disbursing Agent for distributions to the respective Holders of First Lien Claims, as applicable, in each case, at the sole expense of the Debtors or Wind-Down Debtors, as applicable. The First Lien Notes Trustee shall arrange to deliver such distributions to or on behalf of such Holders of First Lien Claims subject to the charging Lien in the First Lien Notes Indenture, and regardless of whether such distributions are made by the First Lien Notes Trustee or by the Disbursing Agent at the reasonable direction of the First Lien Notes Trustee, the charging Lien in the First Lien Notes Indenture shall attach to the distributions to Holders of the First Lien Claims in the same manner as if such distributions were made through the First Lien Notes Trustee. The First Lien Notes Trustee may establish its own record date for distribution and shall transfer or direct the transfer of such distributions through the facilities of DTC. The First Lien Notes Trustee shall have no duties or responsibility relating to any form of distribution that is not DTC eligible and the Debtors or reorganized Debtors, as applicable, shall use commercially reasonable efforts to (i) seek the cooperation of DTC with respect to effectuating distributions and the cancellation of the First Lien Notes as of the Effective Date, and (ii) seek the cooperation of the relevant bank and broker participants in the DTC system to facilitate delivery of the distribution directly to the relevant beneficial owners as soon as practicable after the Effective Date. None of the DIP Agent, the Term Loan Administrative Agent, or the First Lien Notes Trustee shall incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

Notwithstanding any provision of the Plan to the contrary, distributions to Holders of Second Lien Notes Claims shall be made to or at the direction of the Second Lien Notes Trustee and distributions to Holders of Unsecured Notes Claims shall be made to or at the direction of the Unsecured Notes Trustee, each of which shall act as Disbursing Agent for distributions to the respective Holders of Second Lien Notes Claims and Unsecured Notes Claims, as applicable, in each case, at the sole expense of the Debtors or Wind-Down Debtors, as applicable. The Second Lien Notes Trustee and the Unsecured Notes Trustee, as applicable, shall arrange to deliver such distributions to or on behalf of such Holders of Second Lien Notes Claims and Unsecured Notes Claims, subject to the charging Liens in the Second Lien Notes Indenture and the Unsecured Notes Indenture. The Second Lien Notes Trustee and the Unsecured Notes Trustee, as applicable, may, but are not required to, establish its own record date for distribution and shall transfer or direct the transfer of such distributions through the facilities of DTC. All distributions to be made to Holders of Second Lien Notes Claims and Unsecured Notes Claims through DTC shall be made eligible for distribution through the facilities of DTC and, for the avoidance of doubt, under no circumstances will the Second Lien Notes Trustee or the Unsecured Notes Trustee be responsible for making or required to make any distribution under the Plan to Holders of Allowed Notes Claims if such distribution is not eligible to be distributed through the facilities of DTC. Neither the Second Lien Notes Trustee nor the Unsecured Notes shall incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

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1. Powers of the Disbursing Agent.

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ Professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and out-of-pocket expense reimbursement Claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash from the Wind-Down Reserve.

D. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Initial Distribution Date

Except as otherwise provided herein, on the Initial Distribution Date, the Disbursing Agent shall make distributions to Holders of Allowed Claims and Interests as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' books and records or the register or related document maintained by, as applicable, the DIP Agent as of the date of any such distribution; *provided* that the manner of such distributions shall be determined at the reasonable discretion of the Disbursing Agent; *provided*, *further*, that the address for each Holder of an Allowed Claim or Interest shall be deemed to be the address set forth in, as applicable, any Proof of Claim or Proof of Interest Filed by such Holder, or, if no Proof of Claim or Proof of Interest has been Filed, the address set forth in the Schedules. If a Holder holds more than one Claim in any one Class, all Claims of the Holder may be aggregated into one Claim and one distribution may be made with respect to the aggregated Claim.

2. Quarterly Distribution Date

Except as otherwise determined by the Plan Administrator in its reasonable discretion, on each Quarterly Distribution Date or as soon thereafter as is reasonably practicable, the Disbursing Agent shall make the distributions required to be made on account of Allowed Claims and Interests under the Plan on such date. Any distribution that is not made on the Initial Distribution Date or on any other date specified herein because the Claim that would have been entitled to receive that distribution is not an Allowed Claim or Interest on such date, shall be distributed on the first Quarterly Distribution Date after such Claim or Interest is Allowed. No interest shall accrue or be paid on the unpaid amount of any distribution paid on a Quarterly Distribution Date in accordance with Article VI of the Plan.

3. Minimum Distributions.

No fractional interests in New PropCo Securities shall be distributed and no Cash shall be distributed in lieu of such fractional amounts. When any distribution pursuant to the Plan on account of an Allowed Claim or Allowed Interest (as applicable) would otherwise result in the issuance of a number of New PropCo Securities that is not a whole number, the actual distribution of New PropCo Securities shall be rounded as follows: (a) fractions of one-half (½) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (½) shall be rounded to the next lower whole number with no further payment therefore. The total number of authorized New PropCo Securities to be distributed to holders of Allowed Claims shall be adjusted as necessary to account for the foregoing rounding. For distribution purposes (including rounding), DTC will be treated as a single holder.

No Cash payment of less than $100.00 shall be made to a holder of an Allowed Claim on account of such Allowed Claim.

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4. Undeliverable Distributions and Unclaimed Property.

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of twelve months from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Wind-Down Debtors automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property Laws to the contrary), and the Claim of any Holder to such property or Interest in property shall be released and forever barred.

A distribution shall be deemed unclaimed if a Holder has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Plan Administrator of an intent to accept a particular distribution; (c) responded to the Debtors' or Plan Administrator' s requests for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

E. Manner of Payment.

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

F. Distributions on Account of Claims or Interests Allowed After the Effective Date

1. Payments and Distributions on Disputed Claims

Distributions made after the Effective Date to Holders of Disputed Claims or Interests that are not Allowed Claims or Interests as of the Effective Date, but which later become Allowed Claims or Interests, as applicable, shall be paid out of the Wind-Down Reserve, or the Administrative / Priority Claim Reserve and shall be deemed to have been made on the applicable Quarterly Distribution Date after they have actually been made, unless the Plan Administrator and the applicable Holder of such Claim or Interest agree otherwise. No interest shall accrue or be paid on a Disputed Claim before it becomes an Allowed Claim in accordance with Article IX of the Plan.

2. Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by the Plan Administrator, on the one hand, and the Holder of a Disputed Claim or Interest, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim or Interest until the Disputed Claim or Interest has become an Allowed Claim or Interest, as applicable, or has otherwise been resolved by settlement or Final Order; *provided* that if the Debtors do not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim, the Holder of such Disputed Claim shall be entitled to a distribution on account of that portion of such Claim, if any, that is not Disputed at the time and in the manner that the Disbursing Agent makes distributions to similarly-situated Holders of Allowed Claims pursuant to the Plan.

G. Compliance with Tax Requirements.

In connection with the Plan, to the extent applicable, the Debtors or the Plan Administrator, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors and Plan Administrator, as applicable, reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

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H. Allocations.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

I. No Postpetition Interest on Claims.

Unless otherwise specifically provided for in the Plan (including Article III.B.4), the Financing Order, or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, postpetition interest shall not accrue or be paid on any prepetition Claims against the Debtors, and no Holder of a prepetition Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such prepetition Claim.

J. Foreign Currency Exchange Rate.

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal, National Edition*, on the Effective Date.

K. Setoffs and Recoupment.

Except as expressly provided in this Plan, the Plan Administrator may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan distributions to be made on account of any Allowed Claim, any and all Claims, rights, and Causes of Action that such Debtor may hold against the Holder of such Allowed Claim to the extent such setoff or recoupment is either (1) agreed in amount among the relevant Debtor(s) and Holder of Allowed Claim or (2) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; *provided* that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by a Debtor or its successor of any and all Claims, rights, and Causes of Action that such Debtor or its successor may possess against the applicable Holder.

L. Claims Paid or Payable by Third Parties.

1. Claims Paid by Third Parties.

To the extent that the Holder of an Allowed Claim receives payment in full on account of such Claim from a party that is not a Debtor or Wind-Down Debtor, such Holder shall be barred from asserting such Claim against the Debtors and precluded from voting on any plans of reorganization filed in these Chapter 11 Cases and/or receiving distributions from the Debtors on account of such Claims in these Chapter 11 Cases. The Debtors or the Wind-Down Debtors, as applicable, shall be authorized to update the Claims Register to remove any Claims Filed with respect to an Executory Contract or Unexpired Lease that received payment in full on account of such Claim from a party that is not a Debtor or Wind-Down Debtor. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or Wind-Down Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the applicable Debtor or Wind-Down Debtor, to the extent the Holder' s total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties.

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the Debtors or the Wind-Down Debtors, as applicable, shall be authorized to update the Claims Register to remove the applicable portion of such Claim.

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3. Applicability of Insurance Policies.

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything herein to the contrary (including, without limitation, Article X), nothing shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtors or any other Entity may hold against any other Entity, including insurers under any policies of insurance or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

ARTICLE VII
THE PLAN ADMINISTRATOR

A. The Plan Administrator

The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to administer and distribute the amounts set forth in the Administrative / Priority Claims Reserve and the Wind-Down Reserve in accordance with the Plan, and wind-down the business and affairs of the Debtors and Wind-Down Debtors, including (all without further order of the Bankruptcy Court): (1) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Wind-Down Debtors, the Administrative / Priority Claims Reserve, and the Wind-Down Reserve; (2) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan from the Administrative / Priority Claims Reserve and the Wind-Down Reserve; (3) making distributions from the Administrative / Priority Claims Reserve and the Wind-Down Reserve as contemplated under the Plan; (4) establishing and maintaining bank accounts in the name of the Wind-Down Debtors; (5) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (6) paying all reasonable fees, expenses, debts, charges, and liabilities of the Wind-Down Debtors; (7) administering and paying taxes of the Wind-Down Debtors, including filing tax returns; (8) representing the interests of the Wind-Down Debtors or the Estates before any taxing authority in all matters, including any action, suit, proceeding, or audit; (9) complying with the Debtors' continuing obligations under the Sale Order and the Asset Purchase Agreement; and (10) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan in accordance with the Wind-Down Reserve.

The Plan Administrator may resign at any time upon 30 days' written notice delivered to the PropCo Purchaser, the Wind-Down Debtors, and the Bankruptcy Court; provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator, to be chosen by the PropCo Purchaser, with the consent of the Debtors (not to be unreasonably withheld). Upon any other vacancy of the Plan Administrator, a permanent or interim successor Plan Administrator shall be chosen by the PropCo Purchaser and Wind-Down Debtors. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Wind-Down Debtors shall be terminated.

1. Plan Administrator Rights and Powers

The Plan Administrator shall retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under this Plan in accordance with the Wind-Down Reserve, and as otherwise provided in the Confirmation Order. The Plan Administrator shall be the exclusive trustee of the assets of the Wind-Down Debtors for the purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

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2. Retention of Professionals

The Plan Administrator shall have the right, subject to the Wind-Down Reserve, to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of his or her duties. The reasonable fees and expenses of such professionals shall be paid by the Wind-Down Debtors from the Wind-Down Reserve upon the monthly submission of statements to the Plan Administrator to the extent set forth in the Wind-Down Reserve. The payment of the reasonable fees and expenses of the Plan Administrator' s retained professionals shall be made in the ordinary course of business from the Wind-Down Reserve and shall not be subject to the approval of the Bankruptcy Court.

3. Compensation of the Plan Administrator

The Plan Administrator' s compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement and paid out of the Wind-Down Reserve. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Plan Administrator in connection with such Plan Administrator' s duties shall be paid without any further notice to, or action, order, or approval of, the Bankruptcy Court in Cash from the Wind-Down Reserve if such amounts relate to any actions taken hereunder.

4. Plan Administrator Expenses

All costs, expenses and obligations incurred by the Plan Administrator in administering this Plan, the Wind-Down Debtors, or in any manner connected, incidental or related thereto, in effecting distributions from the Wind-Down Debtors thereunder (including the reimbursement of reasonable expenses) shall be incurred and paid in accordance with the Wind-Down Budget. Such costs, expenses and obligations shall be paid from the Wind-Down Reserve.

The Debtors and the Plan Administrator, as applicable, shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. However, in the event that the Plan Administrator is so ordered after the Effective Date, all costs and expenses of procuring any such bond or surety shall be paid for with Cash from the Wind-Down Reserve.

B. Wind-Down

On and after the Effective Date, the Plan Administrator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Plan Administrator shall have the power and authority to take any action necessary to wind-down and dissolve the Debtors' Estates.

As soon as practicable after the Effective Date, the Plan Administrator shall: (1) cause the Debtors and the Wind-Down Debtors, as applicable, to comply with, and abide by, the terms of the Plan, Confirmation Order, Asset Purchase Agreement, the Sale Order, and any other documents contemplated thereby; (2) to the extent applicable, file a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of their state of incorporation or formation (as applicable); and (3) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Plan Administrator without need for any action or approval by the shareholders or board of directors or managers of any Debtor. From and after the Effective Date, except with respect to Wind-Down Debtors as set forth herein, the Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have canceled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, notwithstanding the Debtors' dissolution, the Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

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The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Plan Administrator.

C. Exculpation, Indemnification, Insurance & Liability Limitation

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified, except for fraud, willful misconduct, or gross negligence, in all respects by the Wind-Down Debtors. The Plan Administrator may obtain, at the expense of the Wind-Down Debtors and with funds from the Wind-Down Reserve, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Wind-Down Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

For the avoidance of doubt, notwithstanding anything to the contrary contained herein, the Plan Administrator in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

D. Tax Returns

After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor' s Chapter 11 Case, as determined under applicable tax laws.

ARTICLE VIII
RESERVES ADMINISTERED BY THE PLAN ADMINISTRATOR

A. Establishment of Reserve Accounts

The Plan Administrator shall establish each of the Administrative / Priority Claims Reserve and the Wind-Down Reserve (which may be effected by either establishing a segregated account or establishing book entry accounts, in the sole discretion of the Plan Administrator). The Wind-Down Reserve shall be funded in the amount of the Wind-Down Amount.

B. Undeliverable Distribution Reserve

1. Deposits

If a distribution to any Holder of an Allowed Claim is returned to the Plan Administrator as undeliverable or is otherwise unclaimed, such distribution shall be deposited in a segregated, interest-bearing account, designated as an "Undeliverable Distribution Reserve," for the benefit of such Holder until such time as such distribution becomes deliverable, is claimed or is deemed to have been forfeited in accordance with Article VIII.B.2 of this Plan.

2. Forfeiture

Any Holder of an Allowed Claim that does not assert a Claim pursuant to this Plan for an undeliverable or unclaimed distribution within twelve months after the first distribution is made to such Holder shall be deemed to have forfeited its Claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such Claim for the undeliverable or unclaimed distribution against any Debtor, any Estate, the Plan Administrator, the Wind-Down Debtors, or their respective properties or assets. In such cases, any Cash or other property held by the Wind-Down Debtors in the Undeliverable Distribution Reserve for distribution on account of such Claims for undeliverable or unclaimed distributions, including the interest that has accrued on such undeliverable or unclaimed distribution while in the Undeliverable Distribution Reserve, shall become the property of the Wind-Down Debtors, notwithstanding any federal or state escheat laws to the contrary, and shall promptly be transferred to the Wind-Down Reserve to be distributed according to the priority set forth in Article VIII.D without any further action or order of the Court.

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3. Disclaimer

The Plan Administrator and his or her respective agents and attorneys are under no duty to take any action to attempt to locate any Claim Holder; provided that in his or her sole discretion, the Plan Administrator may periodically publish notice of unclaimed distributions.

4. Distribution from Reserve

Within fifteen (15) Business Days after the Holder of an Allowed Claim satisfies the requirements of this Plan, such that the distribution(s) attributable to its Claim is no longer an undeliverable or unclaimed distribution (provided that satisfaction occurs within the time limits set forth in Article VIII.B of this Plan), the Plan Administrator shall distribute out of the Undeliverable Distribution Reserve the amount of the undeliverable or unclaimed distribution attributable to such Claim.

C. Wind-Down Reserve

On the Effective Date, the Plan Administrator shall establish the Wind-Down Reserve by depositing Cash, in the amount of the Wind-Down Amount into the Wind-Down Reserve. The Wind-Down Reserve shall be used by the Plan Administrator solely to satisfy the expenses of Wind-Down Debtors and the Plan Administrator as set forth in the Plan and Wind-Down Budget; provided that all costs and expenses associated with the winding up of the Wind-Down Debtors and the storage of records and documents of the Wind-Down Debtors (and excluding, for the avoidance of doubt, records and documents related to any Acquired Assets or Assumed Liabilities) shall constitute expenses of the Wind-Down Debtors and shall be paid from the Wind-Down Reserve to the extent set forth in the Wind-Down Budget. Any amount remaining in the Wind-Down Reserve after the dissolution of the Wind-Down Debtors shall be distributed on account of the Allowed First Lien Claims until such Claims are paid in full. In no event shall the Plan Administrator be required or permitted to use its personal funds or assets for such purposes.

D. Administrative / Priority Claims Reserve

On the Effective Date, the Plan Administrator shall establish the Administrative / Priority Claims Reserve by depositing Cash in the amount of the Administrative / Priority Claims Reserve Amount into the Administrative / Priority Claims Reserve (and the Plan Administrator shall deposit Cash into or withdraw Cash from the Administrative / Priority Claims Reserve if the Administrative / Priority Claims Reserve Amount changes at any time). The Administrative / Priority Claims Reserve Amount shall be used to pay Holders of all Allowed Priority Claims, Allowed Other Priority Claims, Allowed Administrative Claims (other than Professional Fee Claims or DIP Claims), Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Secured Claims in full; *provided, however*, for the avoidance of doubt, that any such Allowed Priority Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, or other Allowed Other Secured Claims that are Assumed Liabilities shall be satisfied under the Asset Purchase Agreement and shall not be satisfied from the Administrative / Priority Claims Reserve.

If all or any portion of any such Claim shall become a Claim that is not Allowed, then the amount on deposit in the Administrative / Priority Claims Reserve attributable to such surplus or such Disallowed Claim, including the interest that has accrued on said amount while on deposit in the Administrative / Priority Claims Reserve, shall remain in the Administrative / Priority Claims Reserve to the extent that the Plan Administrator determines necessary to ensure that the Cash remaining in the Administrative / Priority Claims Reserve is sufficient to ensure that all Allowed Priority Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, or other Allowed Other Secured Claims (that are not Assumed Liabilities) will be paid in accordance with the Plan without any further action or order of the Court. Any amounts remaining in the Administrative / Priority Claims Reserve after payment of all Allowed Priority Claims, Allowed Administrative Claims, Allowed Other Priority Tax Claims, Allowed Secured Tax Claims, or other Allowed Other Secured Claims (or any amount in excess of that reasonably needed to be reserved for any Disputed Claims) shall promptly be transferred to the Wind-Down Reserve until such time the Wind-Down Debtors are dissolved in accordance with the provisions herein.

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E. Second Lien Notes Payment

On the Effective Date, the Debtors shall distribute Cash to the Second Lien Notes Trustee in the amount of $1,500,000. Such amount shall be used to pay the Second Lien Notes Claim Amount as set forth in Article III.B of this Plan.

F. Unsecured Notes Payment

On the Effective Date, the Debtors shall distribute Cash to the Unsecured Notes Trustees in the amount of $750,000. Such amount shall be used to pay the Unsecured Notes Claims as set forth in Article III.B of this Plan.

ARTICLE IX
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

A. Allowance of Claims.

After the Effective Date, subject to Article IV.L, the Plan Administrator shall have and retain any and all rights and defenses such Debtor had with respect to any Claim or Interest immediately before the Effective Date except for such rights and defenses assigned or transferred to the Purchasers or their Designee(s) in accordance with the Asset Purchase Agreement (which, for the avoidance of doubt, shall include all rights and defenses of the Debtors with respect to any Claims that constitute Assumed Liabilities (as defined in the Asset Purchase Agreement), which the PropCo Purchaser or OpCo Purchaser, as applicable, shall have and retain).

B. Claims Administration Responsibilities.

Except as otherwise specifically provided in the Plan, the Plan Administrator shall have the sole authority: (1) to File, withdraw, or litigate to judgment objections to Claims or Interests; (2) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

C. Estimation of Claims.

Before or after the Effective Date, the Debtors or the Plan Administrator, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim or Interest, including during the litigation of any objection to any Claim or Interest or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions), and the relevant Debtor or the Plan Administrator, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim or Interest. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

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D. Adjustment to Claims or Interests without Objection.

Any duplicate Claim or Interest or any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, cancelled or otherwise expunged (including pursuant to the Plan), may be adjusted or expunged (including on the Claims Register, to the extent applicable) by the Plan Administrator without a Claims objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court. Additionally, any Claim or Interest that is duplicative or redundant with another Claim against or Interest in the same Debtor or another Debtor may be adjusted or expunged on the Claims Register by the Plan Administrator without the Plan Administrator having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Time to File Objections to Claims.

Any objections to Claims shall be Filed no later than the Claims Objection Deadline.

F. Disallowance of Claims or Interests.

Any Claims or Interests held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code, or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims or Interests may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Wind-Down Debtors. All Claims Filed on account of an indemnification obligation to a director, officer, or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as provided herein or otherwise agreed, any and all Proofs of Claim Filed after the Claims Bar Date or the Administrative Claims Bar Date, as appropriate, shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.

G. No Distributions Pending Allowance.

Notwithstanding any other provision of the Plan, if any portion of a Claim or Interest is a Disputed Claim or Interest, as applicable, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest; *provided* that if the Allowed amount of a Claim or Interest is Disputed, but not the existence or nature of such Claim, such Claim or Interest shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount.

H. Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim or Allowed Interest, distributions (if any) shall be made to the Holder of such Allowed Claim or Allowed Interest (as applicable) in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim or Disputed Interest becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Claim or Interest unless required under applicable bankruptcy law.

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I. Tax Treatment of Reserves for Disputed Claims.

After the Effective Date, cash and/or a portion of the Unsecured Claims Earnout Pool may be distributed to Holders of Claims ultimately determined to be Allowed after the Effective Date (net of any expenses, including any taxes relating thereto), as provided herein, as such Claims are resolved by a Final Order or agreed to by settlement, and such amounts will be distributable on account of such Claims as such amounts would have been distributable had such Claims been Allowed Claims as of the Effective Date under Article III hereof. Pending the resolution of such Claims, a portion of the cash and/or Unsecured Claims Earnout Pool to be received by Holders of such Claims may be held back and deposited into the Wind-Down Reserve.

To the extent that any property is deposited into such a reserve, the reserve is expected to be subject to "disputed ownership fund" treatment under section 1.468B-9 of the United States Treasury Regulations. All corresponding elections with respect to such reserve shall be made, and such treatment shall be applied to the extent possible for all federal, state, local, and non-U.S. tax purposes. Pursuant to such treatment, the reserve will constitute a separate taxable entity and a separate federal income tax return shall be filed with the IRS with respect to the reserve. The reserve will be liable, as an entity, for taxes, including with respect to interest, if any, or appreciation in property between the Effective Date and date of distribution. Such taxes shall be paid out of the assets of the reserve (and reductions shall be made to amounts disbursed from the reserve to account for the need to pay such taxes).

J. No Interest.

Unless otherwise specifically provided for herein or by order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim; *provided* that interest on any Disputed Priority Tax Claim that (i) becomes an Allowed Priority Tax Claim and (ii) is treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code shall accrue and be paid in accordance with section 1129(a)(9)(C) of the Bankruptcy Code.

K. Amendments to Claims.

Except as otherwise expressly provided for in the Plan or the Confirmation Order, on or after the Claims Bar Date or the Administrative Claims Bar Date, as appropriate, a Claim may not be Filed or amended without the authorization of the Bankruptcy Court or the Plan Administrator. Absent such authorization, any new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court to the maximum extent provided by applicable law.

ARTICLE X
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Settlement, Compromise, and Release of Claims and Interests.

The assets of the Debtors and the Wind-Down Debtors are being and shall be used for the satisfaction of expense obligations and/or the payment of Claims only in the manner set forth in the Plan and shall not be available for any other purpose. Except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, compromise, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Plan Administrator), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by current or former employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations

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or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default or "event of default" by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. Therefore, notwithstanding anything in section 1141(d)(3) to the contrary, all Persons or Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors, the Wind-Down Debtors, or the Chapter 11 Cases, that occurred prior to the Effective Date, other than as expressly provided in the Plan, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors' assets in the manner contemplated by the Plan. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests subject to the occurrence of the Effective Date.

B. Release of Liens.

On the Effective Date, concurrently with the Consummation of the PropCo Sale and except as otherwise set forth in the Asset Purchase Agreement, the PropCo Acquired Assets shall be transferred to and vest in PropCo free and clear of all Liens, Claims, charges, interests, or other encumbrances pursuant to sections 363(f) and 1141(c) of the Bankruptcy Code and in accordance with the terms of the Confirmation Order, the Plan, and the Asset Purchase Agreement, each as applicable. Without limiting the foregoing, except as otherwise provided in the Asset Purchase Agreement, the Plan, the Plan Supplement, the Exit Facility Documents, or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of an Other Secured Claim, satisfaction in full of the portion of the Other Secured Claim that is Allowed as of the Effective Date and required to be satisfied pursuant to the Plan, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with Article III hereof, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert automatically to the applicable Debtor and its successors and assigns. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any Cash Collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as may be reasonably requested by the Plan Administrator to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases, and the Debtors and their successors and assigns shall be authorized to file and record such terminations or releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

C. Debtor Release.

Notwithstanding anything contained in this Plan to the contrary, effective as of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, including the service of the Released Parties in facilitating the expeditious reorganization of the Debtors and implementation of the restructuring contemplated by the Plan, the adequacy of which is hereby confirmed, on and after the Effective Date each Released Party is deemed released and discharged by each and all of the Debtors, their Estates, and the Wind-Down Debtors, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims, asserted or assertable on behalf of any of the Debtors, their Estates, or the Wind-Down Debtors, as applicable, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in Law, equity, or otherwise, that the Debtors, their Estates, or the Wind-Down Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, or that any holder of any Claim against, or Interest in, a Debtor or other Entity could have asserted on behalf of the Debtors based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Wind-Down

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Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' or the Wind-Down Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the ABL Documents, the Term Loan Credit Documents, the Restructuring Transactions, the Sale Transaction, entry into the Asset Purchase Agreement, the Exit Facilities, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or Consummation of the RSA, the Disclosure Statement, the DIP Facility, the Sale Transaction, the Asset Purchase Agreement, the Plan, the Plan Supplement, other Definitive Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the DIP Facility, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the pursuit of the Sale Transaction, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion), or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any liabilities or obligations of the PropCo Purchaser to the Debtors relating to the Asset Purchase Agreement, (2) any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including the Asset Purchase Agreement and any documents set forth in the Plan Supplement, each as applicable) executed to implement the Plan, (3) any Causes of Action listed on the Schedule of Retained Causes of Action, or (4) any Claims by any of the Debtors arising out of any ordinary course dealings between such parties.

Entry of the Confirmation Order shall constitute the Bankruptcy Court' s approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court' s finding that each Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties including, without limitation, the Released Parties' contributions to facilitating the Restructuring Transactions and implementing the Plan, (2) a good-faith settlement and compromise of such Claims; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, their respective Estates, or the Wind-Down Debtors asserting any Claim or Cause of Action released pursuant to the Debtor Release.

D. Third-Party Release.

Notwithstanding anything contained in this Plan to the contrary, effective as of the Effective Date, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions of the Released Parties in facilitating the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, to the fullest extent permissible under applicable law, as such Law may be extended or integrated after the Effective Date, on and after the Effective Date each of the Releasing Parties, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, or because of the foregoing entities, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged each Released Party from any and all Claims, interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in Law, equity, or otherwise, including any derivative Claims, asserted or assertable on behalf of any of the Debtors or their Estates, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Wind-Down Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' or the Wind-Down Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the ABL Documents, the First Lien Debt Documents, the Restructuring Transactions, the Sale

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Transaction, entry into the Asset Purchase Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or Consummation of the RSA, the Disclosure Statement, the DIP Facility, the Sale Transaction, the Asset Purchase Agreement, the Plan, the Plan Supplement, other Definitive Documents, the Exit Facilities, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the DIP Facility, the Exit Facilities, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the pursuit of the Sale Transaction, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Releasing Party on the Plan or the Confirmation Order in lieu of such legal opinion), or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any liabilities or obligations of any Entity to the Purchaser Group relating to the Asset Purchase Agreement, (2) any post-Effective Date obligations of any party or Entity under the Plan (or preserved by the Plan), any Restructuring Transaction, or any document, instrument, or agreement (including the Asset Purchase Agreement and any documents set forth in the Plan Supplement, each as applicable) executed to implement the Plan, or (3) any Claims by any of the Debtors arising out of any ordinary course dealings between such parties.

Entry of the Confirmation Order shall constitute the Bankruptcy Court' s approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court' s finding that each Third-Party Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties, (2) a good-faith settlement and compromise of such Claims; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the Third-Party Release.

E. Exculpation.

Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any Cause of Action for any Claim related to any act or omission based on the formulation, preparation, dissemination, negotiation, entry into, filing, execution, and implementation of any transactions approved by the Bankruptcy Court in the Chapter 11 Cases, including the RSA, the Asset Purchase Agreement, the Disclosure Statement, the Plan, the Plan Supplement, other Definitive Documents, the Confirmation Order, or any Restructuring Transaction, contract, instrument, release, or other agreement or document contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order, or created or entered into in connection with the RSA, the Asset Purchase Agreement, the Disclosure Statement, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the pursuit of the Sale Transaction, the administration and implementation of the Plan, including the issuance of any securities pursuant to the Plan or the distribution of property under the Plan or any other related agreement, and the implementation of the Sale Transaction and the Restructuring Transactions contemplated by the Plan (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors or the Wind-Down Debtors, except for Claims related to any act or omission that is determined by Final Order to have constituted actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes on, and distribution of consideration pursuant to, the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to

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the Plan. Notwithstanding the foregoing, the exculpation shall not release (1) any obligation or liability of any Entity relating to the Asset Purchase Agreement, (2) for any post-Effective Date obligation under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or (3) any Claims by any of the Debtors arising out of any ordinary course dealings between such parties.

F. Injunction.

Effective as of the Effective Date, pursuant to section 524(a) of the Bankruptcy Code, to the fullest extent permissible under applicable law, and except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released pursuant to Article X.A of the Plan, released pursuant to the Debtor Release, the Third-Party Release, or another provision of the Plan (including the release of Liens pursuant to Article X.B of the Plan), or are subject to exculpation pursuant to Article X.E of the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Wind-Down Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind, against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan.

Upon entry of the Confirmation Order, all Holders of Claims and Interests and their respective current and former employees, agents, officers, directors, principals, and direct and indirect Affiliates shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Each Holder of an Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in this Article X.F of the Plan.

For the avoidance of doubt and notwithstanding section 1141(d)(3) of the Bankruptcy Code, as of the Effective Date, except as otherwise specifically provided in the Plan and Sale Order, all Persons or Entities who have held, hold, or may hold Claims or Interests that are treated under the Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claim or Interest from the Debtors, the Estates, the Purchaser Group, or the Wind-Down Debtors, except for the receipt of the payments or distributions, if any, that are contemplated by the Plan from the Wind-Down Debtors or otherwise contemplated under the Sale Order. Such injunction will not enjoin Persons or Entities that do not consent to the Third-Party Release from pursuing any direct (but not derivative) Claims or Cause of Action such Persons or Entities may have against Released Parties other than the Debtors, the Estates, the Purchaser Group, or the Wind-Down Debtors.

G. Preservation of Setoff Rights.

Notwithstanding anything in Article X to the contrary or in the Sale Order, any right of setoff or recoupment is preserved against the Debtors, the OpCo Purchaser, PropCo Purchaser, and any of their affiliates and successors to the extent such right(s) exist under applicable law and subject to the Debtors' , OpCo Purchaser' s, PropCo Purchaser' s and any of their affiliates' and successors' , as applicable, right to contest any such right(s) of setoff or recoupment; *provided* that any rights of setoff or recoupment with respect to pre-Closing administrative claims shall only be asserted against the Debtors subject to the reservation of counterparties rights in paragraph 10 of the Sale Order; *provided*, *however*, that notwithstanding the foregoing or anything in the Plan to the contrary, the right of any Entity or Holder of a Claim or Interest to assert setoff or recoupment as a defense or affirmative defense to Claims brought against them is expressly preserved to the extent permitted by applicable law and shall not be impaired, enjoined, precluded, restricted, or otherwise limited by the Plan or the Confirmation Order.

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H. Protections Against Discriminatory Treatment.

To the maximum extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Debtors or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Debtors, or another Entity with whom the Debtors have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

I. Document Retention.

On and after the Effective Date, the Plan Administrator may maintain documents in accordance with the Debtors' standard document retention policy, as may be altered, amended, modified, or supplemented by the Plan Administrator or in connection with the terms of the Asset Purchase Agreement.

J. Reimbursement or Contribution.

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever Disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

K. Term of Injunctions or Stays.

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect on and following the Effective Date in accordance with their terms.

L. Subordination Rights.

The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, whether arising under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code, or otherwise, that a Holder of a Claim or Interest may have against other Claim or Interest Holders with respect to any distribution made pursuant to the Plan. Except as provided in the Plan, all subordination rights that a Holder of a Claim may have with respect to any distribution to be made pursuant to the Plan shall be terminated, and all actions related to the enforcement of such subordination rights shall be permanently enjoined.

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies relating to the subordination rights that a Holder of a Claim may have with respect to any Allowed Claim or any distribution to be made pursuant to the Plan on account of any Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court' s approval, as of the Effective Date, of the compromise or settlement of all such Claims or controversies and the Bankruptcy Court' s finding that such compromise or settlement is in the best interests of the Debtors, the Estates, their respective property, and Holders of Claims and Interests and is fair, equitable, and reasonable.

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M. Agreement with AHEC.

Consistent with the Bankruptcy Court' s ruling on the record at the November 24, 2020 hearing, (a) the *Ad Hoc Equity Committee's Objection to Confirmation of Amended Joint Chapter 11 Plan of Reorganization of J.C. Penney Company, Inc. and its Debtor Affiliates* [Docket No. 1980] shall serve as a valid opt-out of the releases contained in the Plan on behalf of all Holders of Existing Equity Interests and all such Holders of Existing Equity Interests shall be deemed to have validly opted-out of such releases; and (b) to the extent any Holder or Holders of Existing Equity Interests seek to assert direct claims held against the Debtors or any third-parties as of the Petition Date, such Holder or Holders shall file a motion with the Bankruptcy Court with a complaint attached, seeking a determination from the Bankruptcy Court as to whether such claims will be released under the Plan on the Effective Date (such motion, the "Direct Claims Motion"). The Bankruptcy Court shall retain exclusive jurisdiction with respect to the adjudication of the Direct Claims Motion and all parties rights are reserved with respect to the Direct Claims Motion.

ARTICLE XI
CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

A. Conditions Precedent to the Effective Date.

It shall be a condition to the occurrence of the Effective Date that the following conditions shall have been satisfied or waived pursuant to the provisions of Article XI.B hereof:

1. the RSA shall not have been terminated as to all the Consenting First Lien Lenders and remains in full force and effect as to the Consenting First Lien Lenders that remain party thereto;

2. the Plan, the Confirmation Order, the Disclosure Statement, the Sale Order, and the Disclosure Statement Order must be, in form and substance, reasonably acceptable to the Purchasers;

3. each of the Confirmation Order and the Sale Order shall be a final Order and in full force and effect;

4. PropCo shall have been formed;

5. PropCo shall have filed a registration statement on Form 10 pursuant to the Securities Exchange Act of 1934, as amended, with the Securities and Exchange Commission, in form and substance satisfactory to Required Lenders (as defined in the RSA) and shall have received initial comments reasonably satisfactory to the Required Lenders;

6. all documents necessary to consummate this Plan shall have been executed and delivered, and any conditions (other than the occurrence of the Effective Date or certification by the Debtors that the Effective Date has occurred) contained therein shall have been satisfied or waived in accordance therewith;

7. the Bankruptcy Court shall have entered the Financing Order and the Financing Order shall not have been vacated, stayed, revised, modified, or amended in any manner without the prior written consent of the DIP Agent and, to the extent set forth in the Financing Order, the DIP Collateral Agent, and there shall be no default or event of default existing under the DIP Credit Agreement or the Financing Order;

8. the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan;

9. the Wind-Down Reserve, and the Administrative / Priority Claims Reserve shall have each been funded;

10. the Professional Fee Escrow Account shall have been established and funded with the Professional Fee Escrow Amount;

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11. all accrued and unpaid reasonable and documented fees and expenses of the Consenting First Lien Lenders (including any advisors thereto) in connection with the Restructuring Transactions shall have been paid in accordance with the terms and conditions set forth in the RSA, the Financing Order, the DIP Credit Agreement, and the First Lien Debt Documents, as applicable;

12. the final version of the schedules, documents, and exhibits contained in the Plan Supplement, and all other schedules, documents, supplements and exhibits to the Plan, shall be consistent with the RSA in all material respects and otherwise approved by the parties to the RSA consistent with their respective consent and approval rights as set forth therein;

13. any and all requisite governmental, regulatory, and third-party approvals and consents shall have been obtained; and

14. the Debtors shall have implemented the Restructuring Transactions and all transactions contemplated herein in a manner consistent in all respects, the Plan, and the Plan Supplement.

B. Waiver of Conditions.

Subject to and without limiting the rights of each party to the RSA, the conditions to Consummation set forth in Article XI may be waived by the Debtors with the consent of the Purchasers without notice, leave, or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan;

C. Effect of Failure of Conditions.

If the Effective Date of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by the Debtors, any Holders, or any other Entity; (2) prejudice in any manner the rights of the Debtors, any Holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders, or any other Entity in any respect.

ARTICLE XII
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. Modification and Amendments.

Except as otherwise specifically provided in the Plan, the Debtors, with the consent of the Purchasers, reserve the right to modify the Plan, whether such modification is material or immaterial, seek Confirmation consistent with the Bankruptcy Code, and, as appropriate, not re-solicit votes on such modified Plan; *provided*, *however*, that if any such modification would (i) alter the agreements set forth in the Minority First Lien Group Settlement or (ii) except as set forth in paragraph 6 of the Minority First Lien Group Settlement, disproportionately and adversely impact the members of the Minority First Lien Group as compared to other holders of DIP Claims and First Lien Claims, the consent of the Minority First Lien Group shall be required for such modification. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in the Plan), the Debtors expressly reserve their respective rights to revoke or withdraw, to alter, amend, or modify the Plan with respect to each Debtor, one or more times, before or after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

B. Effect of Confirmation on Modifications.

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

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C. Revocation or Withdrawal of Plan.

The Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent plans, in each case subject to any applicable consent rights as set forth in the Sale Order (including the Minority First Lien Group Settlement), the Asset Purchase Agreement, the RSA, or the Financing Order. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Interests or Class of Claims or Interests), assumption, assumption and assignment, or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims, Causes of Action, or Interests; (b) prejudice in any manner the rights of such Debtor, any Holder, or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by such Debtor, any Holder, or any other Entity; *provided* that for the avoidance of doubt, if the OpCo Closing Date has occurred, then the revocation or withdrawal of the Plan, or the failure to obtain Confirmation or Consummation of the Plan, shall not affect the occurrence of the OpCo Closing Date or the consummation of the OpCo Sale.

ARTICLE XIII
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or relating to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cure Costs pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed (or assumed and assigned); (c) the Plan Administrator amending, modifying or supplementing, after the Effective Date, pursuant to Article V, the Executory Contracts and Unexpired Leases to be assumed (or assumed and assigned) or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;

4. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. adjudicate, decide, or resolve any Direct Claims Motions;

7. adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

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8. enter and implement such orders as may be necessary to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

9. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

10. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity' s obligations incurred in connection with the Plan;

11. issue injunctions, enter and implement other orders, or take such other actions as may be necessary to restrain interference by any Entity with Consummation or enforcement of the Plan;

12. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in Article X hereof and enter such orders as may be necessary to implement such releases, injunctions, and other provisions;

13. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim or Interest for amounts not timely repaid pursuant to Article VII.A hereof;

14. enter and implement such orders as are necessary if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

15. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

16. enter an order concluding or closing the Chapter 11 Cases;

17. adjudicate any and all disputes arising from or relating to distributions under the Plan;

18. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

19. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

20. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

21. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

22. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions and releases granted in the Plan, including under Article X hereof;

23. enforce all orders entered by the Bankruptcy Court in the Chapter 11 Cases; and

24. hear any other matter not inconsistent with the Bankruptcy Code.

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ARTICLE XIV
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect.

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Debtors, the Plan Administrator, and any and all Holders of Claims or Interests (irrespective of whether their Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

B. Additional Documents.

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Plan Administrator, as applicable, and all Holders receiving distributions pursuant to the Plan and all other parties in interest may, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Payment of Statutory Fees.

All fees due and payable pursuant to section 1930(a) of the Judicial Code prior to the Effective Date, including fees and expenses payable to the U.S. Trustee, shall be paid by the Debtors on the Effective Date. After the Effective Date, the Disbursing Agent or the Plan Administrator, as applicable, shall pay any and all such fees for each quarter (including any fraction thereof), and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each and every one of the Debtors shall remain obligated to pay quarterly fees to the Office of the U.S. Trustee and file quarterly reports until the earliest of that particular Debtor' s case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

D. Statutory Committee and Cessation of Fee and Expense Payment.

On the Effective Date, the Creditors' Committee shall dissolve automatically and the members thereof shall be released and discharged from all rights, duties, responsibilities, and liabilities arising on or prior to the Effective Date, from, or related to, the Chapter 11 Cases and under the Bankruptcy Code; *provided* that (a) the Creditors' Committee will remain in place after the Effective Date solely for the purpose of addressing (i) all final fee applications for all Professionals for the Creditors' Committee and (ii) the resolution of any appeals of the Confirmation Order, and (b) the members of the Creditors' Committee are discharged from all of their duties as of the date that the Creditors' Committee is dissolved with respect thereto.

E. Rights of Purchasers under the Sale Order.

Nothing contained in the Plan or the Confirmation Order constitutes or shall be construed as any modification or amendment of the rights or obligations of the Purchasers under the Sale Order.

F. Reservation of Rights.

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders unless and until the Effective Date has occurred.

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G. Successors and Assigns.

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

H. Notices.

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

1. if to the Debtors, to:

J. C. Penney Corporation, Inc.
6501 Legacy Drive
Plano, TX 75024

Attention: Bill Wafford (Chief Financial Officer)
Brandy Treadway (Senior Vice President, General Counsel & Secretary)
Email address: bwafford@jcp.com
btreadwa@jcp.com

with copies to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Facsimile: (212) 446-4900

Attention: Joshua A. Sussberg, P.C.
Christopher Marcus, P.C.
Aparna Yenamandra
Email: joshua.sussberg@kirkland.com
christopher.marcus@kirkland.com
aparna.yenamandra@kirkland.com

and

Jackson Walker L.L.P.
1401 McKinney Street, Suite 1900
Houston, Texas 77010

Facsimile: (713) 752-4200
Attention: Matthew D. Cavenaugh
Jennifer F. Wertz
E-Mail: mcavenuagh@jw.com
jwertz@jw.com

2. if to a Consenting First Lien Lender, to:

Milbank LLP
55 Hudson Yards
New York, New York 10001

Attn: Dennis F. Dunne
Andrew M. Leblanc
Thomas R. Kreller
Brian Kinney

E-mail address: ddunne@milbank.com
aleblanc@milbank.com
tkreller@milbank.com
bkinney@milbank.com

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After the Effective Date, the Plan Administrator may notify Entities that, to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entity must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

I. Entire Agreement.

Except as otherwise indicated (including with respect to the Asset Purchase Agreement and the Sale Order, as applicable), the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan. If the Effective Date does not occur, nothing herein shall be construed as a waiver by any party in interest of any or all of such party' s rights, remedies, Claims, and defenses, and such parties expressly reserve any and all of their respective rights, remedies, Claims and, defenses. This Plan and the documents comprising the Plan Supplement, including any drafts thereof (and any discussions, correspondence, or negotiations regarding any of the foregoing) shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of any party in interest of any Claim or fault or liability or damages whatsoever. Pursuant to Federal Rule of Evidence 408 and any applicable state rules of evidence, all negotiations, discussions, agreements, settlements, and compromises reflected in or related to Plan and the documents comprising the Plan Supplement is part of a proposed settlement of matters that could otherwise be the subject of litigation among various parties in interest, and such negotiations, discussions, agreements, settlements, and compromises shall not be admissible into evidence in any proceeding other than a proceeding to enforce the terms of the Plan and the documents comprising the Plan Supplement.

J. Exhibits.

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at http://cases.primeclerk.com/JCPenney or the Bankruptcy Court' s website at www.txs.uscourts.gov/bankruptcy.

K. Nonseverability of Plan Provisions.

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, Impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' and the Purchasers' consent; and (3) nonseverable and mutually dependent.

L. Votes Solicited in Good Faith.

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan and, therefore, no such parties will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan or any previous plan.

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M. Closing of Chapter 11 Cases.

The Plan Administrator shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order necessary to close the Chapter 11 Cases.

N. Waiver or Estoppel.

Each holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

O. Conflicts.

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement, the Plan Supplement, or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control.

P. Avoidance Actions.

As reflected in the Sale Order, neither OpCo Purchaser nor any Person claiming by, through or on behalf of the OpCo Purchaser (including by operation of law, sale, assignment, conveyance or otherwise) shall pursue, prosecute, litigate, institute or commence an action based on, assert, sell, convey, assign or file any Claim that relates to the Avoidance Actions, designated as an OpCo Acquired Asset pursuant to Section 1.1(t) of the Asset Purchase Agreement, or assert or use any such Avoidance Actions for defensive purposes. Nothing in the Sale Order or this Plan shall grant OpCo Purchaser standing to bring any Avoidance Actions. The Sale Order is a complete defense to any effort to pursue, litigate, institute, or commence an action based on, assert, sell, convey, assign, or file any Claim that relates to an Avoidance Action and neither the Debtors, the OpCo Purchaser, nor any other party have standing to bring any Avoidance Actions.

[*Remainder of page intentionally left blank*]

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Dated: December 12, 2020

J. C. PENNEY COMPANY, INC.
on behalf of itself and all other Debtors

/s/ Bill Wafford
Bill Wafford
Chief Financial Officer
J. C. Penney Company, Inc.

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Exhibit 10.1

EXECUTION VERSION

RETAIL MASTER LEASE

by and among

J. C. PENNEY CORPORATION, INC.,

J. C. PENNEY PROPERTIES, LLC and

JCPENNEY PUERTO RICO, INC.,

collectively as Landlord,

and

PENNEY TENANT I LLC,

as Tenant

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RETAIL MASTER LEASE

This **RETAIL MASTER LEASE** (as the same may be amended, supplemented or replaced from time to time, this "**Lease**") is entered into as of December 7, 2020, by and among **J. C. PENNEY CORPORATION, INC**., a Delaware corporation, **J. C. PENNEY PROPERTIES, LLC**, a Delaware limited liability company, and **JCPENNEY PUERTO RICO, INC.**, a Puerto Rico corporation (individually and/or collectively, as the context may require, together with their respective successors and assigns, "**Landlord**"), and **PENNEY TENANT I LLC**, a Delaware limited liability company (together with its successors and permitted assigns, "**Tenant**").

RECITALS

Capitalized terms used and not otherwise defined in this Lease shall, except as otherwise noted herein, have the respective meanings ascribed to such terms in Article II.

Landlord owns the fee and/or leasehold estate (as applicable) with respect to those certain one hundred sixty (160) real properties identified on **Exhibit A-1** attached hereto, as the same may be amended from time to time in accordance with the provisions of this Lease (each a "**Property**", and collectively, the "**Properties**").

The Properties are hereby further classified for all purposes of this Lease as follows: (a) those certain Properties set forth on **Exhibit A-2** attached hereto shall be referred to as the "**Landlord Option Properties**"; (b) those certain Properties set forth on **Exhibit A-3** attached hereto shall be referred to as the "**Tenant Option Properties**"; and (c) those certain Properties set forth on **Exhibit A-4** attached hereto shall be referred to as the "**Go Dark-No Substitution Properties**". The "**Landlord Option Properties**" shall further include any Go Dark Trigger Property that Landlord re-classifies as a "Re-Classified Landlord Option Property" in accordance with (and subject to the provisions of) Section 7.4(g).

Landlord desires to lease the Demised Premises to Tenant, and Tenant desires to lease the Demised Premises from Landlord, in each case, upon and subject to the terms set forth in this Lease and as a single, unitary, indivisible, composite, and inseparable lease of the entirety of the Demised Premises and not as separate or severable leases governed by similar terms, as more specifically set forth in Section 1.2 and subject, in each case, to Landlord' s right to separate this Lease into one or more Severed Leases in its sole and absolute discretion pursuant to the provisions of Section 1.9.

As identified on **Exhibit A-1** attached hereto, each Property as of the date hereof contains a retail store (each, a "**Store**," and collectively, the "**Stores**") that was operated by Tenant' s Predecessor or one or more of its Subsidiaries prior to the date hereof and that Tenant shall, upon and subject to the express provisions of this Lease (including, without limitation, any provisions hereof which permit Tenant to cease operations), continue to operate from and after the date hereof in accordance with the provisions of this Lease.

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
DEMISED PREMISES

1.1 **Demised Premises**. Upon and subject to the terms and conditions herein set forth, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term all of Landlord' s right, title and interest in and to the following (individually and/or collectively, as the context may require, as one economic unit, and as the same may be modified from time to time in accordance with (and subject to) the terms and provisions of this Lease, the "**Demised Premises**"):

(a) with respect to the Properties, the land on which the Properties are located (collectively, the "**Land**"); provided, however, that if Tenant exercises a Tenant Option with respect to less than all of any applicable Tenant Option Property, then from and after the Partial Property Termination Date with respect to such Tenant Option Property, only the Tenant Retained Portion of such Tenant Option Property shall be included in the Demised Premises;

(b) (i) all buildings, structures and other improvements of every kind now or hereafter located on the Land (as the Land may be constituted before or after any applicable Partial Property Termination Date), including, as applicable, the Stores, all free-standing buildings and all other buildings and improvements connected thereto (including all physical entranceways to adjacent malls to the extent located in the walls of attached Stores or other buildings and including, for the avoidance of doubt, the premises demised pursuant to the TBA Leases), together with (ii) for each Property (but only for the Tenant Retained Portion of any Tenant Option Property, from and after the Partial Property Termination Date (if any) with respect thereto), all tenements, hereditaments, easements, rights-of-way, and other rights and privileges in and to such Property or applicable Portion thereof, including (A) easements over any Shopping Centers or other adjacent third-party properties and other real property rights granted pursuant to any applicable Property Documents (including the non-exclusive right to use, in common with Landlord and any other users permitted under this Lease, any applicable Common Areas in accordance with this Lease and all applicable Property Documents), and (B) all sidewalks, walkways, alleyways, roadways, connecting tunnels, passageways and entranceways to any such Shopping Centers or third-party properties, utility pipes, conduits, lines, vaults, gores and adjoining strips of land, service drives, parking aisles, driveways, doorways, parking lots and parking areas appurtenant to such buildings and structures (in each case, whether located on-site or off-site, to the extent Landlord has any interest in the same) (collectively, the "**Leased Improvements**");

(c) all equipment, machinery, fixtures, and other items of real or personal property, including all components thereof, that are now or hereafter located in, on or used in connection with and affixed to or otherwise incorporated into the Land or the Leased Improvements, together with all replacements, modifications, alterations and additions thereof or thereto, including all HVAC equipment, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air- and water-pollution-control, waste-disposal, air-cooling and air-conditioning systems and apparatus, security systems, sprinkler systems and fire- and theft-protection equipment, elevators, escalators and lifts (collectively, the "**Fixtures**"), all of which, to the greatest extent permitted by law, are hereby deemed by the Parties to constitute real estate, together with all equipment, parts and supplies used to service, repair, maintain and equip the foregoing and all replacements, modifications, alterations and additions thereof or thereto; provided, however, that the foregoing shall exclude all items constituting Tenant' s Property; and

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(d) all plans, specifications, drawings, permits, rights and warranties with respect to each Property.

Notwithstanding anything to the contrary contained herein, (A) except to the extent otherwise expressly set forth in this Lease (including in the definition of "Common Areas"), the Demised Premises shall not include any Common Areas that are located outside of the Property (but Tenant shall have the non-exclusive right to use, in common with Landlord and any other users permitted under this Lease, any applicable Common Areas in accordance with this Lease and all applicable Property Documents) and (B) Landlord leases the Demised Premises to Tenant subject only to the Permitted Encumbrances, it being agreed that Landlord shall not, from and after the Commencement Date, further encumber the Demised Premises (other than under or in connection with any Landlord Financing and/or Landlord Financing Documents, subject to the applicable terms and provisions of Article XIV, or other than encumbrances expressly permitted under this Lease) if such encumbrance would (1) have any material adverse effect on ingress or egress to or from, or the visibility of, the applicable Demised Premises or (2) increase in any material respect Tenant' s obligations (unless such increased obligations are monetary and Landlord agrees for itself and its successors and assigns to be responsible for the cost of any such increased obligations), or decrease in any material respect Tenant' s rights, under this Lease or any applicable Property Documents or such encumbrance, in each case without Tenant' s prior written consent, which consent shall be granted or withheld in Tenant' s sole discretion in the case of any encumbrance described in clause (1) above and shall be granted or withheld in Tenant' s commercially reasonable judgment in the case of any encumbrance described in clause (2) above.

1.2 **Single, Unitary, Indivisible Lease**. This Lease constitutes one single, unitary, indivisible lease of the entirety of the Demised Premises and not separate or severable leases governed by similar terms. The Demised Premises constitutes one indivisible economic unit, and the Base Rent and all other economic and other material lease provisions have been extensively negotiated and agreed to, based on the understanding and agreement of the Parties (and each of the Parties has entered into this Lease in reliance thereon, and it is a material inducement to each of them), that the demise of all of the Demised Premises by Landlord to Tenant herein is a single, unitary, indivisible, composite, and inseparable transaction. Except as otherwise expressly provided in this Lease for specific purposes (and then only to the extent so expressly provided), all provisions of this Lease apply equally and uniformly to the entire Demised Premises as one indivisible unit. Except as otherwise expressly set forth in this Lease, an Event of Default with respect to all or any portion of any Demised Premises shall be an Event of Default as to the entire Demised Premises. Except to the extent otherwise expressly provided in this Lease for specific purposes (including, without limitation, with respect to Landlord' s right to separate this Lease into one or more Severed Leases in its sole and absolute discretion pursuant to the terms of Section 1.9), the Parties intend that this Lease shall be, and the provisions of this Lease shall at all times be construed, interpreted and applied so as to carry out their mutual objective to create, a single, unitary, indivisible lease of the entire Demised Premises and, in particular but without limitation, that, for purposes of 11 U.S.C. Section 365, or any successor or replacement thereof or any analogous state law, or any attempt thereunder to assume, reject or assign this Lease in whole or in part, this Lease is a single, unitary, indivisible and non-severable lease and executory contract dealing with one legal and economic

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unit and that this Lease must be assumed, rejected or assigned as a whole with respect to the entirety (and only as to the entirety) of the Demised Premises. Notwithstanding anything to the contrary in the foregoing, the Parties may, from time to time, exercise their respective rights hereunder to remove one or more Properties (or a portion of the Demised Premises within one or more Properties) from this Lease, substitute one or more Replacement Properties for one or more Replaced Properties and/or sell Severed Properties subject to one or more Severed Leases, in each case, pursuant to the express terms and provisions of this Lease, including, without limitation, Section 1.3, Section 1.4, Section 1.5, Section 1.6, Section 1.7 and Section 1.9; provided, however, that no such amendment or removal shall in any way change the single, unitary, indivisible and non-severable nature of this Lease with respect to the Properties remaining subject hereto following any such amendment or removal and all of the foregoing provisions of this Section 1.2 shall thereafter continue to apply in full force with respect thereto. This Lease is separate and distinct from any and all other master leases or other leases now or hereafter entered into between Landlord and Tenant or any of their respective Affiliates, and no breach or default under this Lease, on the one hand, or any such other master leases or leases, on the other hand, shall constitute a breach or default under such other master lease or leases or this Lease, as the case may be.

1.3 **Term; Renewal Terms**.

(a) Subject to the provisions of this Lease, Tenant shall have and hold the Demised Premises for an initial term (the "**Initial Term**" and, as extended in connection with one or more Renewal Terms, the "**Term**"), commencing on the date hereof (the "**Commencement Date**") and ending on the last day of the calendar month in which the twentieth (20th) anniversary of the Commencement Date occurs (as the same may be extended in connection with one or more Renewal Terms, the "**Expiration Date**").

(b) The Initial Term of this Lease may be extended at the option of Tenant (each, a "**Renewal Option**") for an aggregate of five (5) consecutive renewal terms of five (5) years each (each, a "**Renewal Term**") with respect to the entirety of the Demised Premises (but not less than the entirety of the Demised Premises (as the Demised Premises is then constituted), except to the extent set forth below with respect to Sub-Performing Properties) then subject to this Lease, in each case if and only if: (i) at least twenty-four (24) months prior to the then current Expiration Date, Tenant delivers to Landlord a Notice, which shall be irrevocable once delivered, that Tenant is exercising its Renewal Option to extend the Term for the ensuing Renewal Term (a "**Renewal Notice**") and (ii) as of both the date on which Landlord receives the Renewal Notice (the "**Renewal Exercise Date**") and the applicable Renewal Term Commencement Date, (A) no Disabling Event then exists (it being agreed that, for the avoidance of doubt, if a Disabling Event exists that is specific to a particular Property (i.e., a Defaulted Property) and such Disabling Event is not a Major Event of Default, then the Renewal Term may not be exercised with respect to such Defaulted Property but may, unless the provisions of clause (B) below apply, be exercised with respect to all Properties that are not then Defaulted Properties) and (B) the aggregate Base Rent Allocation Amounts (for the then current Lease Year) of the Properties that then constitute Defaulted Properties shall not exceed ten percent (10%) of the total annual Base Rent in effect during such Lease Year. In connection with its exercise of each Renewal Option, Tenant shall have the right to exclude from such Renewal Option any Property (any such Property, a "**Renewal Kick Out Property**" and such right, a "**Renewal Kick Out Option**") that is, as of the last day of the fiscal quarter immediately preceding the applicable Renewal Exercise Date (or, if such

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Renewal Exercise Date is the last day of a fiscal quarter, as of such Renewal Exercise Date) a Sub-Performing Property by specifying in the applicable Renewal Notice that Tenant is exercising a Renewal Kick Out Option with respect to such Sub-Performing Property and specifying in such Renewal Notice each such Sub-Performing Property with respect to which Tenant is exercising a Renewal Kick Out Option. If Tenant elects not to include a Renewal Kick Out Property in the applicable Renewal Option, then Tenant shall make such election and shall identify each applicable Renewal Kick Out Property in the applicable Renewal Notice, and in the event of such an election, on the then current Expiration Date (i.e., the day immediately preceding the applicable Renewal Term Commencement Date): (1) this Lease shall terminate solely with respect to each such Renewal Kick Out Property and such Renewal Kick Out Property shall be removed from this Lease and shall no longer be a part of the Demised Premises; (2) Tenant shall surrender each such Renewal Kick Out Property to Landlord in the Required Return Condition and otherwise in accordance with the terms and conditions of this Lease; and (3) the Base Rent and Property Charges with respect to any such Renewal Kick Out Property shall be adjusted, and Tenant' s obligations hereunder with respect to each such Renewal Kick Out Property shall terminate, in each case in accordance with (and subject to) Section 1.10. For the avoidance of doubt, (I) a Renewal Kick Out Property shall no longer be eligible to be leased by Tenant pursuant to the then-current Renewal Option or any subsequent Renewal Option and (II) without limiting anything in Section 1.7, Tenant shall have no obligation to substitute any Renewal Kick Out Property that is removed from the Lease pursuant to this Section 1.3(b).

(c) Within twenty (20) Business Days following Landlord' s receipt of a Renewal Notice delivered in accordance with this Section 1.3, Landlord shall provide Tenant with Landlord' s calculation of the base rent that Landlord could reasonably be expected to obtain in connection with a re-letting of the Demised Premises upon and subject to the other terms of this Lease (the "**Fair Market Rent**"), which Fair Market Rent shall exclude (i) all base rent that is attributable to Properties that, as a result of a Property Termination or Tenant' s exercise of a Renewal Kick Out Option, will not constitute part of the Demised Premises as of the commencement of the applicable Renewal Term ("**Pending Removal Properties**") and (ii) the fair market rental value (the "**Alterations Fair Market Rent**") of any Structural Alterations (excluding any Required Removal Alterations) made by Tenant in accordance with the terms of this Lease following the Commencement Date with respect to the structure or envelope of the buildings comprising the Leased Improvements that exist as of the Commencement Date ("**Existing Envelope Alterations**") that are subject to such Renewal Option and that are identified by Tenant in the applicable Renewal Notice (together with a reasonably-detailed description of any such Existing Envelope Alterations and, if reasonably requested by Landlord in order to determine the Alterations Fair Market Rent for the same, supporting documentation or information with respect to such Existing Envelope Alterations). If within sixty (60) days after Tenant' s receipt of such Fair Market Rent calculation (taking into account Landlord' s calculation of the Alterations Fair Market Rent, if applicable): (A) Tenant shall give Landlord Notice (a "**Fair Market Rent Dispute Notice**") that it disputes Landlord' s calculation of any such Fair Market Rent (taking into account the Alterations Fair Market Rent, as applicable) (a "**Fair Market Rent Dispute**"), such Fair Market Rent shall thereafter be determined in accordance with Article XXIII; (B) Tenant shall give Landlord Notice that Tenant affirmatively agrees with Landlord' s calculation (a "**Fair Market Rent Acceptance Notice**"), then such calculation shall conclusively be the Fair Market Rent during the applicable Renewal Term; or (C) Tenant fails to deliver to Landlord a Fair Market Rent Dispute Notice or a Fair Market Rent Acceptance Notice, then (1) Landlord may provide

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Notice to Tenant of such failure in accordance with the Deemed Approval Procedure and (2) if Tenant fails to respond within the time periods set forth in the Deemed Approval Procedure, such failure shall be deemed to be a Fair Market Rent Acceptance Notice and the Fair Market Rent shall be Landlord' s calculation thereof. Notwithstanding anything to the contrary in the foregoing or in such Article XXIII, under no circumstances shall the amount of any such Fair Market Rent during any Renewal Term be (I) for the initial Renewal Term, more than ten percent (10%) higher than the aggregate Base Rent payable during the final Lease Year of the Initial Term (excluding the Base Rent Allocation Amounts of any Pending Removal Properties and excluding any Excess Amounts that Tenant will have paid in full as of the applicable Renewal Term Commencement Date) and (II) for any subsequent Renewal Term, more than ten percent (10%) higher than the aggregate Base Rent payable during the final Lease Year of the preceding Renewal Term (excluding the Base Rent Allocation Amounts of any Pending Removal Properties and any Excess Amounts that Tenant will have paid in full as of the applicable Renewal Term Commencement Date).

(d) During any Renewal Term, except as otherwise expressly set forth herein, all of the terms and conditions of this Lease shall remain in full force and effect. Each Renewal Term shall commence on the date immediately succeeding the then current Expiration Date (a "**Renewal Term Commencement Date**") and shall end on the fifth (5th) anniversary of such Expiration Date. Each of the Parties shall, at the request of the other, enter into a letter agreement or an amendment to this Lease memorializing and confirming the Fair Market Rent, the Demised Premises and other relevant terms applicable during the applicable Renewal Term, but the failure to enter into any such letter agreement or amendment shall not affect the effectiveness of such Renewal Option.

(e) For the avoidance of doubt, Tenant may not exercise any Renewal Option unless Tenant has validly exercised, as applicable, all previous Renewal Options (and the Term has been extended pursuant to each such previously exercised Renewal Option).

1.4 **Short Term Ground Leases**.

(a) The Parties hereby acknowledge that each of the Properties listed on Schedule 1.4(a) (each, a "**Ground Leased Property**") is subject to a ground lease summarized on such Schedule 1.4(a) (as such ground lease may be amended, supplemented or replaced from time to time, a "**Ground Lease**"). Notwithstanding anything to the contrary in this Lease, including, without limitation, Section 1.3, if the term of any Ground Lease is scheduled to expire by its terms on a date that is earlier than the then current Expiration Date (as applicable to such Ground Lease, its "**Ground Lease Expiration Date**" and any such Ground Lease, a "**Short-Term Ground Lease**"), then, unless the term of such Short-Term Ground Lease is extended to a date that occurs after the Expiration Date in accordance with clause (b) or clause (c) of this Section 1.4, this Lease shall automatically terminate with respect to such Short-Term Ground Lease on the Ground Lease Expiration Date (a "**GL Termination Date**"). On any such GL Termination Date, (i) Tenant shall surrender the applicable Ground Leased Property to Landlord in the Required Return Condition and otherwise in accordance with the terms and conditions of this Lease, (ii) such Ground Leased Property shall be automatically removed from this Lease and shall no longer be a part of the Demised Premises, and (iii) the Base Rent and applicable Property Charges shall be adjusted, and Tenant' s obligations hereunder with respect to such Ground Leased Property shall terminate, in each case in accordance with (and subject to) Section 1.10.

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(b) To the extent that Landlord has the right under the express terms of any Short-Term Ground Lease to (i) extend or renew the term thereof beyond the applicable Ground Lease Expiration Date (a "**Ground Lease Renewal Option**") or (ii) if there are then no remaining Ground Lease Renewal Options, purchase the applicable Ground Leased Property, whether pursuant to a purchase option, right of first offer or right of first refusal to purchase or otherwise (each, a "**Ground Lease Purchase Option**" and, together with any Ground Lease Renewal Option, each, a "**Ground Lease Option**"), so long as no Disabling Event exists as of the date that Landlord has the right to exercise any such Ground Lease Option and neither Landlord nor Tenant has exercised any right hereunder to remove such Ground Leased Property from this Lease, Landlord shall timely exercise such Ground Lease Option in accordance with the terms of the applicable Ground Lease; provided, however, that Landlord shall have no obligation to exercise any such Ground Lease Purchase Option for a purchase price (or to make or accept any offer if such Ground Lease Purchase Option is a right of first offer or right of first refusal to purchase) that would exceed one hundred twenty-five percent (125%) of the fair market value of the applicable Ground Leased Property (such excess, the "**Excess Amount**") unless, within fifteen (15) days following Notice from Landlord to Tenant informing Tenant of Landlord' s good faith estimate of such Excess Amount, Tenant delivers Landlord Notice, which Notice shall be irrevocable once delivered, that Tenant shall pay (and such Notice shall be deemed to be Tenant' s binding commitment to pay) such Excess Amount as an increase in the Base Rent payable under this Lease (amortized on a straight-line basis over the then-remaining Term, not taking into account any unexercised Renewal Terms) following the closing of such acquisition. In the event of any dispute regarding the fair market value of a Ground Leased Property, the same shall be determined in accordance with the expedited arbitration provisions of Article XXVII. In the event that Landlord exercises any Ground Lease Option, (A) this Lease shall not terminate on the applicable GL Termination Date, but shall continue in full force and effect with respect to the applicable Ground Leased Property in accordance with the terms and provisions hereof, and (B) in the case of an exercise by Landlord of a Ground Lease Purchase Option, from and after the date of Landlord' s acquisition of fee simple title to the applicable Ground Leased Property, the Base Rent shall increase by an amount equal to the annual base rent that was due and payable under the applicable Ground Lease as of the Business Day immediately preceding the applicable Ground Lease Expiration Date or, if earlier, the applicable acquisition date. Notwithstanding the foregoing, in connection with Landlord' s exercise of any Ground Lease Renewal Option, to the extent that the terms of the applicable renewal or extension term (including the rent and other financial terms thereof) are not expressly governed by or set forth in the applicable Ground Lease and are within Landlord' s discretion to negotiate ("**Discretionary Terms**"), including the rent and other financial terms thereof, so long as no Disabling Event then exists, Landlord shall consult with Tenant with respect to such Discretionary Terms, Tenant shall have the right to participate with Landlord (at Tenant' s sole cost and expense) in the negotiation of such Discretionary Terms, and such Discretionary Terms shall be subject to Tenant' s approval, which shall not be unreasonably withheld, conditioned or delayed.

(c) To the extent that Landlord does not have a Ground Lease Renewal Option or Ground Lease Purchase Option under the express terms of any Short-Term Ground Lease, then, so long as no Disabling Event then exists, beginning on or prior to the date that is twenty-four (24)

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months prior to the applicable Ground Lease Expiration Date, Landlord shall, at Landlord' s sole expense (except to the extent otherwise expressly provided herein), use commercially reasonable efforts to negotiate with the applicable Ground Lessor either (i) a modification of such Short-Term Ground Lease (which shall be in form and substance reasonably satisfactory to Landlord and Tenant) that extends the applicable Ground Lease Expiration Date through at least the end of the then current Term (taking into account any extension of the Term pursuant to any validly exercised Renewal Options) (a "**Ground Lease Renewal**") or (ii) subject to the foregoing limitations set forth in Section 1.4(b), the purchase of the applicable fee estate. Notwithstanding the foregoing, (A) the Discretionary Terms of any Ground Lease Renewal pursuant to this Section 1.4(c) shall be subject to Tenant' s approval, which shall not be unreasonably withheld, conditioned or delayed, and Tenant shall have the right to participate with Landlord (at Tenant' s sole cost and expense) in the negotiation thereof and (B) with respect to any purchase of the fee estate to a Ground Leased Property pursuant to this Section 1.4(c), (1) Tenant shall have the right to participate with Landlord (at Tenant' s sole cost and expense) in the negotiation thereof and (2) the Base Rent payable under this Lease shall increase by an amount equal to the annual base rent that was due and payable under the applicable Ground Lease as of the Business Day immediately preceding the applicable Ground Lease Expiration Date or, if earlier, the applicable acquisition date, and the Additional Rent payable hereunder shall be correspondingly reduced.

(d) Tenant shall reasonably cooperate with Landlord in connection with any exercise and/or negotiation of any Ground Lease Option, Ground Lease Renewal or purchase of the applicable fee estate pursuant to Section 1.3(c), and, to the extent that the calculation of the rent payable in connection with a Ground Lease Renewal relates in whole or in part to the gross or net sales of Tenant or its Affiliates at the applicable Ground Leased Property, Tenant shall provide any relevant information and/or documentation reasonably requested by Landlord with respect thereto promptly following such request.

1.5 **Landlord Option Properties**.

(a) Subject to the provisions of this Section 1.5, Landlord shall have the several independent options (each, a "**Landlord Option**"), exercisable from time to time in Landlord' s sole discretion (but subject to the limitations set forth in this Section 1.5), to terminate this Lease as to any one or more of the Landlord Option Properties (whether such Landlord Option Property is classified as such on the Commencement Date or constitutes a Re-Classified Landlord Option Property pursuant to Section 7.4(g)); provided, however, that, except with respect to any Re-Classified Landlord Option Property (as to which the limitation set forth in this proviso shall not apply), Landlord may only exercise the Landlord Option with respect to up to eight (8) Landlord Option Properties in any individual Lease Year. If Landlord elects to exercise any Landlord Option, Landlord shall do so only by giving Tenant Notice thereof (each, a "**Landlord Option Notice**" and the date of each such Landlord Option Notice, a "**Landlord Option Exercise Date**"), which Landlord Option Notice shall identify each Landlord Option Property as to which the Lease shall be terminated, which termination shall occur and be effective on the date (the "**LO Termination Date**") that is twenty-four (24) months following the delivery of such Landlord Option Notice (or, in the case of any Re-Classified Landlord Option Property, three (3) months following the delivery of such Landlord Option Notice); provided, however, that in each case (i) if any LO Termination Date is scheduled to occur between November 1 of any calendar year and February 28 (or February 29 in the case of a leap year) of the immediately succeeding calendar

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year with respect to a Landlord Option Property that is, as of the scheduled LO Termination Date, then being used for a retail use and is then not a Go Dark Property, then the LO Termination Date shall be extended to March 1 of such succeeding calendar year (provided that the foregoing clause (i) shall not apply with respect to any Re-Classified Landlord Option Property), and/or (ii) if any LO Termination Date is scheduled to occur on any day that is not a Business Day, then the LO Termination Date shall be the immediately succeeding Business Day. For the avoidance of doubt, any such LO Termination Date shall not occur earlier than the date that is twenty-four (24) months following the date of Landlord' s delivery to Tenant of the applicable Landlord Option Notice (or, in the case of any Re-Classified Landlord Option Property, three (3) months following the delivery of the applicable Landlord Option Notice) and rent shall be payable by Tenant through and including the applicable LO Termination Date, as the same may be extended pursuant to this Section 1.5(a).

(b) Following Landlord' s delivery to Tenant of a Landlord Option Notice:

(i) (A) On or before the date that is sixty (60) days prior to the LO Termination Date, Landlord shall deliver to Tenant an updated title commitment with respect to the applicable Landlord Option Property, (B) Tenant shall reasonably cooperate with Landlord in obtaining (at Landlord' s option and at Landlord' s sole expense) an owner' s and/or lender' s policy of title insurance (or an endorsement reasonably satisfactory to Landlord with respect to any existing title insurance policy of Landlord or any applicable Landlord Lender title insurance policy) (in each case, a "**Current Title Policy**") from a national title company selected by Landlord (a "**Title Company**") in a reasonable amount determined by Landlord or such Landlord Lender, committing to insure or insuring, as the case may be, Landlord' s fee or ground leasehold title (as applicable) to such Landlord Option Property or the lien of any applicable Landlord Mortgage with respect thereto, and (C) Tenant shall be required to pay all Costs and Expenses required to remove all Encumbrances first affecting the applicable Landlord Option Property from and after the Commencement Date other than (1) Permitted Encumbrances (except for any Permitted Encumbrances described in clauses (a) or (b) (collectively, "**Excepted Liens**") or clause (e) or (i)(iii) of the definition thereof); and (2) any Excepted Liens to the extent that Tenant Bonds the same; provided, however, that Tenant shall remain liable for the full payment and discharge of all such Excepted Liens in accordance with the applicable provisions hereof. Without limiting the foregoing, Tenant shall execute, acknowledge and deliver (in recordable form, if applicable) such affidavits and other instruments and documentation (including title affidavits, general assignments, bills of sale and/or terminations of or to the applicable memoranda of lease, as the case may be), each in form and substance reasonably satisfactory to the Parties, as Landlord, such Landlord Lender or the Title Company may reasonably require in connection with the issuance to Landlord and/or such Landlord Lender (as applicable) of a Current Title Policy effective as of the LO Termination Date. The obligations of Tenant under this clause (b)(i), as they relate to any Landlord Option Property or other Property, shall be referred to as the Tenant' s "**Title Obligations**".

(ii) Landlord and Tenant shall (or shall cause Lease Guarantors to, as applicable): (A) upon either Party' s request, on or prior to the LO Termination Date, execute, acknowledge and deliver to the other Party one or more amendments to this Lease and/or any of the other Lease Documents to which each is a party to reflect the termination

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of this Lease and such other Lease Documents (collectively, "**Lease Document Amendments**") as to the applicable Landlord Option Property on the LO Termination Date; and (B) at least one (1) Business Day prior to the LO Termination Date, deliver to Landlord invoices and other documentation reasonably requested by Landlord evidencing the Costs and Expenses incurred by Tenant in connection with the preparation, negotiation and execution of such Lease Document Amendments (collectively, "**LO Amendment Costs**"). Subject to Landlord' s receipt of such invoices and other documentation, Landlord shall reimburse the Tenant Parties for all LO Amendment Costs incurred by such Tenant Parties on or prior to the applicable LO Termination Date and Landlord shall be responsible for all costs and expenses incurred by Landlord in connection with Landlord' s exercise of the Landlord Option; provided, however, that, unless Tenant (or its Designated Affiliate) purchases such Landlord Option Property pursuant to the terms of Section 1.9(g), Tenant shall be responsible for the Costs and Expenses incurred by Tenant in connection with Tenant' s closure of such Landlord Option Property and Tenant' s surrender thereof to Landlord in the Required Return Condition (as hereafter defined) and otherwise in accordance with the terms and conditions of this Lease. Each of the Parties hereby acknowledges and agrees that neither Party shall be obligated to pay the other any termination fee or other similar compensation (other than Costs and Expenses for which a Party shall be entitled to reimbursement pursuant to the terms of this Section and other than Landlord' s obligation to pay to Tenant Landlord' s Share of Apportioned LO Capex Costs (as more particularly set forth in Section 8.3(e) hereof)) in connection with Landlord' s exercise of any Landlord Option with respect to any Landlord Option Property or the termination of this Lease with respect to such Landlord Option Property pursuant thereto.

(iii) On the applicable LO Termination Date: (A) unless Tenant (or its Designated Affiliate) purchases such Landlord Option Property pursuant to the terms of Section 1.9(g), Tenant shall surrender the applicable Landlord Option Property to Landlord in the Required Return Condition and otherwise in accordance with the terms and conditions of this Lease; (B) Landlord shall pay Tenant an amount equal to Landlord' s Share of any Apportioned LO Capex Costs with respect to such Landlord Option Property; (C) such Landlord Option Property shall be automatically removed from this Lease and shall no longer be a part of the Demised Premises, and this Lease shall automatically terminate with respect thereto; and (D) the Base Rent and applicable Property Charges shall be adjusted, and Tenant' s obligations hereunder with respect to such Landlord Option Property shall terminate, in each case in accordance with (and subject to) Section 1.10.

(c) At all times during the Term, provided that no Disabling Event then exists, upon Landlord' s delivery of a Landlord Option Notice for a Landlord Option Property (other than a Re-Classified Landlord Option Property, as to which the Parties agree such provisions shall not apply), the applicable provisions of Section 1.9(g) shall apply with respect to any sale of such Landlord Option Property from and after such delivery of a Landlord Option Notice.

1.6 **Tenant Option Properties**.

(a) Tenant shall have the several independent options (each, a "**Tenant Option**"), exercisable from time to time during the Term (but subject to the limitations set forth in this Section 1.6), to terminate this Lease as to the entirety of any Tenant Option Property (a

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"**Total TO Termination**") or a portion of any Tenant Option Property (a "**Partial TO Termination**"), in each case in accordance with the terms and conditions set forth in this Section 1.6; provided, however, that Tenant may only exercise the Tenant Option with respect to up to five (5) Tenant Option Properties in any individual Lease Year. If Tenant elects to exercise any Tenant Option, Tenant shall do so by giving Landlord Notice thereof (a "**Tenant Option Notice**"), which Tenant Option Notice shall (i) identify the individual Tenant Option Property or, in the case of a Partial TO Termination, the individual Tenant Option Property and the approximate percentage of the total Gross Leasable Square Footage of such Tenant Option Property as to which the Lease shall be terminated, which termination shall occur and be effective on the date (in the case of a Partial TO Termination, a "**Partial Property Termination Date**"; in the case of a Total TO Termination, a "**Total Termination Date**"; and together with any Partial Property Termination Date, each, a "**TO Termination Date**") that is twenty-four (24) months following the delivery of the Tenant Option Notice (or if such date is not a Business Day, then on the immediately succeeding Business Day), and (ii) in the case of a Partial TO Termination, be accompanied by preliminary conceptual and schematic plans (the "**Preliminary TO Plans**") for the separation and division of the portion of such Tenant Option Property that Tenant proposes shall remain subject to this Lease (the "**Tenant Retained Portion**") from the remainder of such Tenant Option Property (the "**Landlord Retained Portion**" and, together with the Tenant Retained Portion, collectively, the "**Portions**"). For the avoidance of doubt, any such TO Termination Date shall not occur earlier than the date that is twenty-four (24) months following the date of Tenant' s delivery to Landlord of the applicable Tenant Option Notice.

(b) Tenant' s right to exercise any Tenant Option that would result in a Partial TO Termination with respect to any Tenant Option Property shall be subject to the following terms and conditions:

(i) the applicable Tenant Retained Portion of such Tenant Option Property shall be a portion of contiguous space therein and shall have a Gross Leasable Square Footage that is not less than twenty-five thousand (25,000) square feet;

(ii) the applicable Landlord Retained Portion that would result from such Partial TO Termination shall (A) have a Gross Leasable Square Footage that is not less than fifty thousand (50,000) contiguous square feet, (B) be functional for the continued use by Landlord or any future tenant or other occupant for operations therein consistent with the particular Permitted Use then in effect with respect to such Tenant Option Property on the date of the applicable Tenant Option Notice, (C) comply with all applicable Property Requirements, including the ADA, and (D) be physically separate from Tenant' s operations in such Tenant Retained Portion (collectively, the "**Division Principles**");

(iii) within sixty (60) days following Landlord' s receipt of a Tenant Option Notice, Landlord shall provide Tenant with Landlord' s proposed modifications to the Preliminary TO Plans and to Tenant' s proposed configuration of the Tenant Retained Portion and the Landlord Retained Portion of such Tenant Option Property (which modifications may be in the form of new or additional schematic and conceptual plans), and thereafter, the Parties shall cooperate in good faith, consistent with the Division Principles, to expeditiously further develop and refine such Preliminary TO Plans until such Preliminary TO Plans are in form and substance mutually satisfactory to the Parties

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(in their commercially reasonable judgment), and the Parties hereby acknowledge their mutual intent that, to the greatest extent practicable under the circumstances and unless the Parties otherwise agree in their respective sole but good faith discretion, the respective Portions of such Tenant Option Property shall afford the Parties retaining such Portions reasonably comparable use and enjoyment of their respective Portions and such Portions shall be reasonably comparable (taking into account, among other relevant factors, the relative size and location of such Portions) with respect to all other material attributes relating to such use and enjoyment. In the event the Parties cannot reach agreement on the final Preliminary TO Plans or Tenant' s proposed configuration of such respective Portions within ninety (90) days after Landlord' s receipt of the applicable Tenant Option Notice, either Party may submit such disagreement to binding arbitration in accordance with the provisions of Section 27.1 hereof;

(iv) following the Parties' finalization of the Preliminary TO Plans pursuant to the foregoing clause (iii), Tenant and Landlord shall continue to cooperate in good faith to agree on, and to implement as soon as practicable, (A) final plans and specifications (the "**Final TO Plans**") for the physical separation and division of the Tenant Retained Portion from the Landlord Retained Portion of such Tenant Option Property in accordance with such Final TO Plans (which shall consist of (x) the design and construction of any demising wall between the respective Portions of such Tenant Option Property and (y) if required pursuant to any applicable Property Requirements, the design and construction of any multi-tenant corridors for ingress and egress to and from the elevators, fire exits and common bathrooms within or upon such Tenant Option Property) (collectively, the "**TO Separation Work**"), (B) the selection of all architects, engineers, contractors and vendors for such TO Separation Work and (C)(1) easements and other agreements for (I) ingress, egress and access which are useful or necessary to, from and between such Portions and/or (II) sharing building services and facilities, building service equipment, mechanical rooms, stockrooms, elevators, escalators and other Fixtures, as appropriate, and (2) such other joint arrangements (consistent with the Division Principles) as may be necessary or desirable in the reasonable good faith judgment of the Parties to ensure the harmonious operation of such respective Portions of such Tenant Option Property from and after the applicable Partial Property Termination Date, which shall, to the extent commercially practicable, include creating separate tax lots and separate metering (or sub-metering) of utilities and other actions designed to separately and equitably allocate Property Charges among such respective Portions, it being the mutual understanding of the Parties that, to the greatest extent practicable under the circumstances, amounts constituting Third-Party Charges with respect to each such Portion shall be billed separately to the Party retaining such Portion and shall be payable directly by such Party to the applicable Person entitled to such payment; provided, however, that, to the extent that, in connection with any exercise of a Tenant Option, it is not commercially practicable for the Parties to arrange for the separate and equitable payment of any such Third-Party Charges directly by the Parties retaining such respective Portions, the Parties shall jointly negotiate, approve and execute such cost sharing agreements as may be mutually acceptable to them in their commercially reasonable judgment (the "**TO Cost Sharing Agreements**") and shall otherwise cooperate reasonably and in good faith with each other to ensure that the Property Charges relating to each such Portion shall be separately and equitably apportioned to the Party retaining such Portion. If the Parties are unable to agree upon the form and substance of a TO Cost Sharing Agreement, either Party may submit such disagreement to binding arbitration in accordance with the provisions of Section 27.1 hereof;

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(v) Landlord shall perform all TO Separation Work and the following conditions shall apply to the performance of such TO Separation Work: (A) Landlord shall obtain not fewer than three (3) written bids from reputable general contractors or construction managers (which shall not be Affiliates of Landlord) (each, a "**General Contractor**") with respect to the TO Separation Work and, promptly following its receipt of such bids, provide Tenant Notice thereof together with copies of any material documents received by Landlord in connection therewith; (B) as soon as reasonably practicable, and in all events on or prior to the date that is six (6) months prior to the applicable TO Termination Date, Landlord shall make a determination as to the lowest bid and shall submit such determination and the name of the General Contractor to Tenant for its approval, which approval shall not be unreasonably withheld, conditioned or delayed and which may be submitted pursuant to the Deemed Approval Procedure; if such bid is not approved, the Parties shall consult with each other in good faith to reach a determination as to an acceptable bid (either from the General Contractor proposed initially by Landlord or one of the other General Contractors) until the Parties have reached agreement on an acceptable bid and General Contractor; (C) upon Tenant' s approval (or deemed approval) of a bid, Landlord shall negotiate the form and substance of the applicable construction agreement and any related material trade contracts, each of which shall be subject to Tenant' s approval, which shall not be unreasonably withheld, conditioned or delayed and which may be submitted pursuant to the Deemed Approval Procedure; (D) if such agreements and contracts are not approved, the Parties shall consult with each other in good faith to reach a determination as to an acceptable form of each such agreement or contract until the Parties have reached agreement on an acceptable form; (E) upon Tenant' s approval (or deemed approval) of such bid, agreements and contracts, Landlord shall exercise its diligent efforts to cause the General Contractor to perform all TO Separation Work diligently, in a good and workmanlike manner and in accordance with the approved construction agreement and the Construction Standards; (F) Tenant shall be solely responsible (at its sole cost and expense) for (1) Tenant' s closure of the Landlord Retained Portion of the applicable Tenant Option Property, and (2) Tenant' s surrender to Landlord of such Landlord Retained Portion in the Required Return Condition, and (G) Tenant shall pay all costs and expenses, or reimburse Landlord for its Costs and Expenses, incurred in connection with the TO Separation Work (collectively, "**TO Separation Costs**"), which TO Separation Costs shall be limited to (I) the hard and soft costs of the design and construction of any demising wall between the respective Portions of such Tenant Option Property and, if required pursuant to applicable Property Requirements, the hard and soft costs of the design and construction of multi-tenant corridors for ingress and egress to and from the elevators, fire exits and common bathrooms within such Tenant Option Property, (II) all other costs required to ensure the compliance of such TO Separation Work with all applicable Property Requirements (including the ADA and including all new or updated building codes, fire codes and other Legal Requirements) which may be applicable to the improvements located in the Tenant Retained Portion as a result of the undertaking of such TO Separation Work (including any "legal non-conforming use" or "grandfathered" exception from such compliance applicable to such improvements), it being agreed that

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Landlord shall alone bear the cost of any and all such new or updated Legal Requirements applicable to the Landlord Retained Portion, and (III) the costs of installing a new meter or meters (or submeters, where applicable) with respect to Utility Charges for the applicable Tenant Retained Portion (it being agreed that Landlord shall alone bear the costs of installing a new meter or meters (or submeters, where applicable) with respect to utility charges for the applicable Landlord Retained Portion). In no event shall the TO Separation Costs include any development or other fee payable to Landlord or any of its Affiliates. The Parties hereby agree that, except as expressly provided in the foregoing provisions of this clause (v), without limiting anything in Article XV, each of Landlord and Tenant shall pay any and all costs incurred by it in connection with any further improvements to the Portion of the applicable Tenant Option Property retained by it;

(vi) if, and to the extent that, Tenant requests (and Landlord approves in accordance with the standards applicable to Alterations (to the extent that Landlord has the right to approve the same hereunder)) the construction, as part of the TO Separation Work, of any improvements or upgrades to Tenant' s existing Leased Improvements or Fixtures in the Tenant Retained Portion (collectively, "**Upgrades**"), then Tenant shall be solely responsible for all costs and expenses incurred by it and all Costs and Expenses incurred by Landlord in connection with such Upgrades; and

(vii) at Landlord' s request, Tenant shall assign to Landlord on the applicable Partial Property Termination Date all of Tenant' s right, title and interest (if any) in and to all warranties, guaranties or permits and any plans and specifications, in each case, then in existence and in Tenant' s possession at the time of such request that relate to any Alterations or other Work (or any applicable portion thereof) performed by Tenant from and after the Commencement Date in the Landlord Retained Portion of such Tenant Option Property; provided, however, that to the extent that such Alterations or other Work also relate to the applicable Tenant Retained Portion, Tenant shall retain non-exclusive rights to use such warranties, guarantees, permits, plans and specifications and the Parties shall thereafter reasonably cooperate in good faith to bifurcate any such warranties, guaranties and permits to the maximum extent feasible or to otherwise ensure that each Party has the full benefit of such warranties, guaranties and permits to the extent that the same relate to its respective Portion of such Tenant Option Property.

(c) Without limiting Tenant' s obligations set forth in Section 1.6(b), in the event that Tenant exercises any Tenant Option:

(i) if requested by Landlord in connection with such Tenant Option, the provisions of Section 1.5(b)(i) shall apply, mutatis mutandis, with respect to the applicable Tenant Option Property (or, in the case of a Partial TO Termination, the applicable Landlord Retained Portion);

(ii) (A) Tenant shall (or shall cause Lease Guarantors to, as applicable) upon Landlord' s request, execute, acknowledge and deliver to Landlord, at Tenant' s sole cost and expense, one or more Lease Document Amendments to reflect the termination of this Lease as to the applicable Tenant Option Property (or, in the case of a Partial TO Termination, the Landlord Retained Portion thereof) and, in the case of any Partial TO

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Termination, (B) the Parties shall enter into any TO Cost Sharing Agreements with respect to such Tenant Option Property that may be required in accordance with (and subject to the provisions of) Section 1.6(b)(iv), (C) at least one (1) Business Day prior to the TO Termination Date, Landlord shall deliver to Tenant invoices and other documentation reasonably requested by Tenant evidencing the Costs and Expenses incurred by Landlord in connection with the preparation, negotiation and execution of such Lease Document Amendments (collectively, "**TO Amendment Costs**"), and (D) subject to Tenant' s receipt of such invoices and other documentation, Tenant shall reimburse Landlord for such TO Amendment Costs on or prior to such TO Termination Date. Each of the Parties hereby acknowledges and agrees that neither Party shall be obligated to pay the other Party any termination fee or other similar compensation (other than Costs and Expenses to which a Party shall be entitled pursuant to the terms of this Section) in connection with Tenant' s exercise of any Tenant Option or the termination of this Lease with respect to all or any portion of a Tenant Option Property pursuant thereto.

(iii) On the applicable TO Termination Date, (A) Tenant shall surrender the applicable Tenant Option Property (or, in the case of a Partial TO Termination, the Landlord Retained Portion thereof) to Landlord in the Required Return Condition, (B) such Tenant Option Property or Landlord Retained Portion (as applicable) shall be automatically removed from this Lease and shall no longer be a part of the Demised Premises, and this Lease shall automatically terminate with respect thereto, and (C) the Base Rent and the applicable Property Charges shall be adjusted, and Tenant' s obligations hereunder with respect to such Tenant Option Property (or, in the case of a Partial TO Termination, the Landlord Retained Portion thereof) shall terminate, in each case in accordance with (and subject to) Section 1.10.

1.7 **Substitution Option**.

(a) Subject to the terms and conditions of this Section 1.7 and Section 1.9 (which eliminates the application of the Substitution Option from each Severed Lease and Severed Properties subject to such Severed Lease), Tenant shall have the several independent options (each, a "**Substitution Option**") (i) during the period beginning on the third (3rd) anniversary of the Commencement Date and ending on the tenth (10th) anniversary of the Commencement Date (the "**First Substitution Period**") and (ii) during the period beginning on the day after the tenth (10th) anniversary of the Commencement Date and ending on the fifteenth (15th) anniversary of the Commencement Date (the "**Second Substitution Period**" and, together with the First Substitution Period, each a "**Permitted Substitution Period**"), to, with respect to one or more Sub-Performing Properties (except to the extent that Landlord has timely exercised any Landlord Option with respect to such Sub-Performing Property (including pursuant to any Accelerated Landlord Option Election, if such Sub-Performing Property is a Go Dark Trigger Property)), terminate (subject to the limitations contained in this Section) this Lease from time to time as to one or more Sub-Performing Properties upon the replacement of each such Sub-Performing Property with a Qualified Replacement Property that is not then subject to this Lease. For purposes of this Lease, once a Sub-Performing Property has been replaced with a Qualified Replacement Property in accordance with this Section, such Sub-Performing Property shall no longer be subject to this Lease and shall be referred to as a "**Replaced Property**" and such Qualified Replacement Property shall become subject to this Lease and shall be referred to as a "**Replacement Property**". If Tenant

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elects to exercise any Substitution Option, Tenant shall do so by giving Landlord not less than six (6) months' Notice thereof (a "**Substitution Notice**"), which Substitution Notice shall identify Tenant' s proposed effective date of such substitution (the "**Substitution Date**").

(b) Tenant' s right to substitute Sub-Performing Properties with Qualified Replacement Properties shall be subject to the following limitations: during each Permitted Substitution Period, Tenant may only exercise a Substitution Option if, as of the applicable Substitution Date, the aggregate Reference Base Rent Allocation Amounts for the following Properties (without duplication) shall not exceed fifteen percent (15%) of the Reference Base Rent (such 15% limitation, as it applies independently to each Permitted Substitution Period, the "**Maximum Substitution Limitation**"): (i) the Sub-Performing Properties that are the subject of the applicable Substitution Option; (ii) all Replaced Properties previously substituted under this Lease during such Permitted Substitution Period; (iii) all Properties (other than Additional Go Dark Properties) that became Go Dark Trigger Properties during the corresponding Limited Go Dark Period pursuant to Section 7.4(f); and (iv) in the case of the First Limited Go Dark Period, all Properties (other than Additional Go Dark Properties) that became Go Dark Trigger Properties from the Commencement Date until the beginning of the First Limited Go Dark Period, except, in each case, to the extent that (A) a Go Dark Trigger Cure has occurred with respect to any such Property in accordance with (and subject to) Section 7.4(h) or (B) any such Property has been removed from this Lease pursuant to Landlord' s exercise of a Landlord Option (after such Property becomes a Re-Classified Landlord Option Property) (collectively, "**Go Dark/Substitution Properties**"). For the avoidance of doubt: (1) each Go Dark/Substitution Property shall count toward both the Maximum Substitution Limitation for the applicable Permitted Substitution Period and the corresponding Maximum Initial Go Dark Limitation for the applicable Limited Go Dark Period pursuant to Section 7.4(c) and (2) the Maximum Substitution Limitation for the First Substitution Period shall be calculated independently of the Maximum Substitution Limitation for the Second Substitution Period, and vice versa, such that (I) Go Dark/Substitution Properties counted toward the First Substitution Period shall not be counted toward the Maximum Substitution Limitation for the Second Substitution Period and (II) if Tenant fails to reach the Maximum Substitution Limitation during the First Substitution Period, then Tenant shall be deemed to have waived such excess substitution rights and the same shall not be carried forward or otherwise credited to the Maximum Substitution Limitation for the Second Substitution Period. Notwithstanding anything to the contrary in this Lease, (aa) in the event that Landlord exercises a Landlord Option with respect to any Go Dark/ Substitution Property that is a Landlord Option Property or a Re-Classified Landlord Option Property and this Lease terminates with respect to such Property in accordance with Section 1.5 and the other applicable provisions of this Lease, such Go Dark/Substitution Property shall (from and after the applicable LO Termination Date) no longer be deemed to be a "Go Dark/Substitution Property" and shall not count towards the Maximum Substitution Limitation for any purposes of this Lease, and (bb) Tenant shall not be permitted to exercise or, if exercised, consummate any Substitution Option hereunder with respect to a Property as to which Landlord has, prior to any such consummation, delivered a Lease Severance Notice; provided, however, that (XX) if the severance of this Lease that was the subject of such Lease Severance Notice failed to occur, then Landlord shall, upon Notice to Tenant, cancel or rescind such Lease Severance Notice promptly following such failure (whether such failure resulted from a determination by Landlord (in its sole discretion) not to continue the negotiation of, or the termination of the purchase agreement (if any) governing, the Property Sale to which such Lease Severance Notice related or for any other reason) and (YY) if Landlord has cancelled

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or rescinded such Lease Severance Notice as provided in clause (XX), then Tenant shall be permitted to exercise or, if exercised, consummate any Substitution Option hereunder with respect to the Property that was the subject of such rescinded or cancelled Lease Severance Notice until a subsequent Lease Severance Notice is delivered by Landlord with respect to such Property.

(c) Tenant' s right to exercise any Substitution Option shall be subject to the following terms and conditions:

(i) each applicable Replacement Property (A) shall be a Qualified Replacement Property and shall be subjected to this Lease on the applicable Substitution Date with no reduction in the Rent and (B) shall be deemed to constitute a Qualified Replacement Property for purposes of this Lease in accordance with the following qualification procedure: (1) Tenant shall deliver to Landlord the documentation required pursuant to clauses (ii)-(iv) of this Section 1.7(c) of this Lease; (2) within ten (10) Business Days after Tenant' s delivery to Landlord of such documentation, Landlord shall notify Tenant as to whether such documentation is sufficient to establish that the proposed Replacement Property qualifies as a Qualified Replacement Property pursuant to the requirements set forth in this Section 1.7(c) (including, without limitation, the financial information and real estate third party reports required under clauses (ii)-(iv) of this Section 1.7(c)); and (3) if: (I) within such ten (10) Business Day period, Landlord determines that such proposed Replacement Property qualifies as a Qualified Replacement Property, then such proposed Replacement Property shall qualify as a Qualified Replacement Property for the applicable Substitution Option; (II) within such ten (10) Business Day period, Landlord determines that such proposed Replacement Property does not qualify as a Qualified Replacement Property, then Landlord shall include in its rejection Notice a reasonably-detailed description of the reasons for such rejection and if Tenant disputes any of the reasons for such rejection, Tenant shall have the right, upon Notice delivered not later than five (5) Business Days following its receipt of such rejection Notice, to submit such dispute to expedited arbitration in accordance with the provisions of Section 27.1); and (III) by the end of such ten (10) Business Day period, Landlord fails to deliver a rejection Notice containing a reasonably-detailed description of the reasons for such rejection, then such proposed Replacement Property shall qualify as a Qualified Replacement Property for the applicable Substitution Option;

(ii) (A) Tenant shall have delivered to Landlord financial information evidencing the EBITDAR to Rent Ratio and Sales Per Square Foot for the proposed Replacement Property, in substantially the same form as Tenant is providing to Landlord under this Lease with respect to the Replaced Property, for (1) the then current calendar year and (2) to the extent that Tenant or any of its Affiliates owned such Replacement Property during the preceding calendar year, such preceding calendar year, in each case accompanied by an Officer' s Certificate of Tenant certifying that there has been no material adverse change in such information since the respective dates of such information, and (B) neither the EBITDAR to Rent Ratio nor the Sales Per Square Foot, calculated on a Portfolio-Wide basis, during (and calculated with respect to) the four (4) fiscal quarters ending immediately prior to the related substitution shall be reduced as a result of the substitution of the applicable Replacement Property for the applicable Replaced Property;

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(iii) within one hundred twenty (120) days prior to such Substitution Date, Tenant shall deliver (or cause to be delivered) to Landlord:

(1) a broker' s opinion of value (a "**BOV**") prepared by a Pre-Approved Appraiser or another nationally or regionally recognized commercial real estate broker reasonably approved by Landlord with respect to the applicable Replaced Property and proposed Replacement Property, prepared not more than one hundred twenty (120) days prior to the applicable Substitution Date;

(2) a current Phase I environmental site assessment with respect to the proposed Replacement Property prepared consistent with ASTM Standard E1527 (or any successor thereto promulgated by ASTM International), which Phase I environmental site assessments shall be dated within one hundred twenty (120) days of the applicable Substitution Date and shall not identify any "recognized environmental conditions" that require further investigation or remediation or, if any such "recognized environmental conditions" are so identified at any Replacement Property, a Phase II environmental report with respect thereto that concludes no remedial action is required pursuant to any Environmental Law with respect to such "recognized environmental conditions";

(3) a property condition report with respect to the proposed Replacement Property evidencing that such Replacement Property is in good condition and repair, free of substantial deferred maintenance, and containing such other findings as are customarily included in a property condition report; and

(4) an insurance certificate evidencing that Tenant (or one of its Affiliates) is then maintaining for the proposed Replacement Property the insurance coverage required for Properties under Article XI;

(iv) Tenant shall deliver to Landlord: (A) within one hundred twenty (120) days prior to such Substitution Date, a preliminary title report issued by the Title Company with respect to the proposed Replacement Property and (B) on or prior to the Substitution Date, Current Title Policies for such Replacement Property in form and substance reasonably satisfactory to Landlord and committing to insure, or insuring (as the case may be), Landlord' s fee simple title to (or, if applicable, the lien of the applicable Landlord Financing Documents on) such Replacement Property, subject only to permitted exceptions acceptable to Landlord and/or the applicable Landlord Lenders in their reasonable discretion, and containing such coverage and endorsements (in each case, to the extent that such coverage and endorsements are available at commercially reasonable rates in the applicable State of such Replacement Property) as are in effect for other Properties in the jurisdiction (if applicable) or as may be required by Landlord and/or such Landlord Lenders in their commercially reasonable discretion;

(v) Landlord shall have received (A) an ALTA survey with respect to the proposed Replacement Property that is sufficient (together with any "no change" affidavit, if required) to enable the Title Company to omit the standard survey exception from each applicable Current Title Policy, which ALTA survey shall otherwise be in form

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and substance reasonably satisfactory to Landlord, and (B) a zoning report with respect to such Replacement Property that is sufficient for the Title Company to issue a zoning endorsement in connection with such Current Title Policy (except to the extent that delivery of such an endorsement is not available at commercially reasonable rates in the applicable State of such Replacement Property) and stating that such Replacement Property is in conformance or (subject to Landlord' s reasonable approval) legal conformance, in all material respects, with all applicable zoning, subdivision and building laws, which zoning report shall otherwise be in form and substance reasonably satisfactory to Landlord;

(vi) Landlord and any applicable Landlord Lender (if required) shall have inspected and approved the proposed Replacement Property utilizing their respective site inspection, underwriting approval and other criteria, including, without limitation, completion of such environmental due diligence of such Replacement Property as they deem necessary or advisable; provided, however, that a Phase I environmental site assessment that does not identify any "recognized environmental conditions" or any other Environmental Event or, if any "recognized environmental conditions" or other Environmental Event are so identified, a Phase II environmental report that concludes no remedial action is required pursuant to any Environmental Law with respect to such "recognized environmental conditions" or Environmental Event, delivered pursuant to Section 1.7(c)(iii)(2) shall be deemed to constitute satisfactory environmental due diligence of the Replacement Property by Landlord and any applicable Landlord Lender;

(vii) Tenant shall (or shall cause Lease Guarantors to, as applicable) upon Landlord' s request, execute, acknowledge and deliver to Landlord (or any applicable Severed Landlord), at Tenant' s sole cost and expense, one or more Lease Document Amendments to reflect the termination of this Lease as to the applicable Replaced Property and the subjection of the applicable Replacement Property to this Lease (or any applicable Severed Lease);

(viii) (A) Tenant shall (or shall cause its applicable Affiliate to) execute, acknowledge, and deliver such other documents, instruments and agreements, and take all such further actions, as may be reasonably required by Landlord in its commercially reasonable discretion in connection with the closing of the applicable substitution, including a special warranty deed or its equivalent by Tenant (or such Affiliate of Tenant) in favor of Landlord conveying fee simple (or, if applicable, leasehold) title to each Replacement Property to Landlord, subject to permitted exceptions reasonably acceptable to Landlord (including those approved by Landlord in its reasonable discretion pursuant to clause (iv) above), all of which documents shall be in form and substance reasonably satisfactory to Landlord (together with any Lease Document Amendments executed pursuant to the foregoing clause (viii), collectively, the "**Replacement Documents**"); and (B) Landlord shall execute, acknowledge, and deliver such other documents, instruments and agreements, and take all such further actions, as may be reasonably required by Tenant in its commercially reasonable discretion in connection with the transfer of the Replaced Property to Tenant at the closing of the applicable substitution, including a special warranty deed or its equivalent by Landlord in favor of Tenant conveying fee simple title (or, if applicable, leasehold title) to each Replaced Property to Tenant in the Acceptable Title Condition, all of which documents shall be in form and substance reasonably satisfactory to Tenant;

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(ix) Tenant shall deliver to Landlord an Officer' s Certificate certifying that the requirements set forth in this Section 1.7 have been satisfied in connection with the substitution of the applicable Replacement Property for the applicable Replaced Property;

(x) In connection with any substitution of a Replacement Property for a Replaced Property: (A) at the written election of Landlord or Tenant made by delivering Notice to the other Party at any time prior to the Substitution Date, (1) the Parties shall endeavor, to the greatest extent practicable, to structure such substitution through a qualified intermediary in order to complete a like-kind exchange under Section 1031 of the Code and (2) the Parties shall reasonably cooperate to cause such substitution to qualify as such a like-kind exchange for which no income or gain will be recognized under such Section 1031; provided, however, that (I) such Section 1031 election right of Tenant and Landlord' s obligations under this clause (x) to cooperate in connection with such election shall each be conditioned upon no Disabling Event then existing (except to the extent that such substitution is being made in connection with a Default Substitution Election that will eliminate such Disabling Event as a result of such substitution) and (II) such like-kind exchange under Section 1031 of the Code shall not delay, or result in any extension of, the Substitution Date for the applicable replacement of the Replaced Property; and (B) if any income or gain shall be recognized as a result of such substitution, Tenant shall promptly pay or reimburse Landlord for any taxes assessed or imposed on Landlord with respect to such income or gain; and

(xi) Tenant shall have paid or reimbursed Landlord and/or any applicable Landlord Lenders for all Costs and Expenses incurred by Landlord or such Landlord Lender in connection with such Substitution Option.

(d) Upon the satisfaction of the foregoing terms and conditions set forth in this Section 1.7 in connection with any Substitution Option (any of which conditions may be waived by Landlord in its sole discretion) and contemporaneously with the execution, acknowledgement and delivery by the Parties of the applicable Replacement Documents, all of which shall be dated as of the applicable Substitution Date: (i) Landlord shall convey fee simple (or, if applicable, leasehold) title to the applicable Replaced Property to Tenant or its designee by a special warranty deed or its equivalent (or an assignment of lease with customary representations and warranties, as applicable) consistent with the Acceptable Title Condition, but otherwise on an "as is" basis and without any representation, recourse or warranty other than (1) that Landlord owns the fee or leasehold estate (as the case may be) with respect to the applicable Replaced Property and has the authority to convey such Replaced Property and (2) that such Replaced Property is not subject to any liens created by any Landlord Financing Documents or any action of Landlord (unless such liens will be removed as of the Substitution Date); (ii) such Replaced Property shall be removed from this Lease and shall no longer be a part of the Demised Premises, and this Lease shall terminate with respect thereto; (iii) the applicable Replacement Property shall be deemed to have been substituted for such Replaced Property and shall be automatically made subject to this Lease and a part of the Demised Premises; (iv) there shall be no change in the Base Rent as a result of such removal and substitution; (v) Tenant shall be released from any obligations under this Lease

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(other than its obligation to pay Base Rent) that first arise or accrue from and after such Substitution Date and that relate solely to such Replaced Property; and (vi) this Lease shall otherwise remain unmodified and in full force and effect, Tenant hereby acknowledging and agreeing that, except for the replacement of such Replaced Property with such Replacement Property as provided herein, no such substitution and replacement shall affect this Lease or any terms hereof as the same relate to (A) the remainder of the Demised Premises or (B) any obligations of Tenant (including with respect to such Replaced Property) that expressly survive the expiration or termination of this Lease (collectively, "**Surviving Obligations**"), but only (with respect to this clause (B)) to the extent that any such obligations relating to such Replaced Property accrued on or prior to the applicable Substitution Date.

(e) If requested by Tenant, Landlord shall, at Tenant' s sole cost and expense, (i) cooperate in good faith (including by delivering customary title affidavits) with Tenant in connection with Tenant' s efforts to cause any national title company that Tenant selects to deliver, on or prior to the applicable Substitution Date, an owner' s policy of title insurance (or a pro forma thereof) for each applicable Replaced Property in form and substance reasonably satisfactory to Tenant and committing to insure, or insuring (as the case may be), Tenant' s title to such Replaced Property as of such Substitution Date and (ii) upon Tenant' s request, execute, acknowledge, and deliver such documents, instruments and agreements (including bills of sale, assignment and assumption agreements, etc.), and take all such further actions, as may be reasonably required by Tenant or such title company in connection with Tenant' s acquisition of such Replaced Property, all of which documents shall be in form and substance reasonably satisfactory to Tenant and/or such title company, as the case may be.

1.8 **Reservation of Access**. Tenant hereby acknowledges and agrees that Landlord (for itself and its Related Users and Landlord Lenders) hereby retains and reserves all rights of access, ingress and egress in, on, over and through each Demised Premises for all reasonable purposes and in each case upon reasonable prior written notice during normal business hours (and, if requested by Tenant, in the company of a representative of Tenant), in each case, except in the event of an emergency, in connection with any of the following:

(a) the effectuation or evaluation of any potential termination of this Lease as to all or any portion of such Demised Premises in connection with any termination or substitution right expressly provided in this Lease, including, without limitation, the Landlord Option, the Tenant Option and the Substitution Option (both before and following the exercise of each such Landlord Option, Tenant Option, Substitution Option or other termination right (as applicable));

(b) the performance of any maintenance, repair, Alterations, service, installations and/or other Work with respect to such Demised Premises that Landlord is entitled or obligated to perform under the Lease;

(c) the compliance by Landlord and/or any of its Affiliates with any of their respective obligations under any applicable Landlord Financing Documents;

(d) inspecting and showing such Demised Premises to potential purchasers, tenants and lenders and/or advertising the availability of such Demised Premises for sale or (during the final twenty-four (24) months of the then current Term, taking into account any validly exercised Renewal Options as of such date) reletting;

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(e) from and after the Partial Property Termination Date with respect to any Tenant Option Property, to the fullest extent applicable with respect to such Tenant Option Property:

(i) access, ingress and egress to and from all shared entrances and exits of such Tenant Option Property during normal business hours as shall have been established by mutual agreement between Landlord and Tenant in their commercially reasonable discretion on or prior to such Partial Property Termination Date with respect to such Tenant Option Property, including with respect to any applicable Shopping Center or any other properties, parking areas or other Common Areas adjacent or otherwise relating to such Tenant Option Property;

(ii) shared utilization of such restrooms, stairwells, escalators and elevators, stockrooms, storage rooms, loading docks and other similar areas and facilities as may be established by mutual agreement between Landlord and Tenant in connection with such Tenant Option Property; and

(iii) nonexclusive use, in common with Tenant and Tenant' s Related Users of all parking areas and other Common Areas relating to such Tenant Option Property; and

(f) the exercise of all other rights and remedies of Landlord in connection with the foregoing and otherwise under this Lease.

Notwithstanding the foregoing or anything to the contrary herein, all rights of access and entry shall (except, for the avoidance of doubt, during the existence of a Disabling Event) be exercised reasonably and in such a manner as to not materially or unreasonably interfere with Tenant' s business operations at the Demised Premises or Tenant' s access to or use of any Common Areas in connection with such business operations.

1.9 **Separation of Leases**.

(a) At any time and from time to time, at the election of Landlord in its sole and absolute discretion and upon Notice (each such Notice, a "**Lease Severance Notice**") delivered by Landlord, subject to the applicable deadline set forth in the immediately succeeding sentence (each applicable deadline, a "**Lease Severance Deadline**"), Landlord may sever and remove one or more Properties (each, a "**Severed Property**" and, collectively, the "**Severed Properties**") from this Lease, and such Severed Property or Severed Properties shall upon such severance and thereafter be subject to a separate lease (each, a "**Severed Lease**") between the purchaser of the applicable Severed Properties or other designee of Landlord (as applicable, a "**Severed Landlord**"), in each case, as landlord, and either (i) Penney Tenant III LLC, a Delaware limited liability company, or another Subsidiary of Tenant' s Parent (other than Tenant or any Subsidiary thereof) reasonably acceptable to Landlord or (ii) in the case of a Multi-State Severed Lease, a newly formed Special Purpose Entity that leases only the Severed Properties pursuant to such Multi-State Severed Lease and that is a Subsidiary of Tenant' s Parent (other than Tenant or any Subsidiary thereof) reasonably

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acceptable to Landlord (it being agreed that any Subsidiary of Pledgor or of Penney Tenant III LLC shall be reasonably acceptable to Landlord), in each case, as tenant (as applicable, the "**Severed Tenant**"), which Severed Lease shall be effective as of the date of the transfer of the applicable Severed Properties to the applicable Severed Landlord and the execution by such Severed Landlord and the Severed Tenant (as applicable) of all related documentation required under this Section 1.9 (a "**Lease Severance Date**"). Each Lease Severance Notice shall identify the Severed Properties proposed to be subject to each Severed Lease. The Lease Severance Deadlines shall be as follows: (A) for the first Severed Lease, the date that is forty-three (43) days after Landlord delivers the applicable Lease Severance Notice and drafts of the proposed Severed Lease and proposed Severed Lease Ancillary Documents in the forms described in this Section 1.9 (which documentation shall, in each case, be prepared by Landlord at Landlord' s sole cost and expense); and (B) for each Severed Lease subsequent to the first Severed Lease, the date that is twenty-eight (28) days after Landlord delivers the applicable Lease Severance Notice and drafts of the proposed Severed Lease and proposed Severed Lease Ancillary Documents in the forms described in this Section 1.9 (which documentation shall, in each case, be prepared by Landlord at Landlord' s sole cost and expense); provided, however, that, for each such Severed Lease subsequent to the first Severed Lease if, in the aggregate, more than fifteen (15) Severed Leases and "Severed Leases" (as defined in the DC Master Lease) have been delivered to Tenant and/or the tenant under the DC Master Lease, respectively, in any rolling thirty (30) day period, then the Lease Severance Deadline for each additional Severed Lease above such fifteen (15) Severed Leases and "Severed Leases" (as defined in the DC Master Lease) delivered to Tenant hereunder in such rolling thirty (30) day period shall be extended by a number of days equal to (x) five (5), multiplied by (y) one (1) in the case of the sixteenth (16th) Severed Lease delivered during such rolling thirty (30) day period, two (2) in the case of the seventeenth (17th) Severed Lease delivered during such rolling thirty (30) day period, three (3) in the case of the eighteenth (18th) Severed Lease delivered during such rolling thirty (30) day period, and so on. By way of example, if, in the aggregate, eighteen (18) Severed Leases and "Severed Leases" (as defined in the DC Master Lease) have been delivered to Tenant and/or the tenant under the DC Master Lease, respectively, in any rolling thirty (30) day period, then Tenant shall have (1) twenty-eight (28) days after Landlord delivers the applicable Lease Severance Notice and drafts of the proposed Severed Lease and proposed accompanying Severed Lease Ancillary Documents in the forms described in this Section 1.9 to execute and deliver the applicable Severed Lease and accompanying Severed Lease Ancillary Documents for the second (2nd) through the fifteenth (15th) Severed Leases and (2) thirty-three (33) days (i.e., an additional five (5) days) to execute and deliver the sixteenth (16th) Severed Lease and accompanying Severed Lease Ancillary Documents, thirty-eight (38) days (i.e., an additional ten (10) days) to execute and deliver the seventeenth (17th) Severed Lease and accompanying Severed Lease Ancillary Documents, and forty-three (43) days (i.e., an additional fifteen (15) days) to execute and deliver the eighteenth (18th) Severed Lease and accompanying Severed Lease Ancillary Documents, in each case, following Landlord' s delivery of the applicable Lease Severance Notice (together with drafts of the proposed Severed Lease and proposed accompanying Severed Lease Ancillary Documents in the forms described in this Section 1.9).

(b) In the event that Tenant determines, in its good faith discretion, that any Severed Lease delivered by Landlord to Tenant contains changes to the Pre-Agreed Severed Lease Form that are material or adverse to Tenant, then Tenant shall have the right to object to such changes in accordance with the provisions of this Section 1.9(b). Tenant shall make any objection described in the immediately preceding sentence (if at all) by delivering Notice thereof to Landlord

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specifying, in electronic format by highlighting the changes to the Pre-Agreed Severed Lease Form to which Tenant objects and describing, in reasonable detail (in bracketed notes or footnotes to such highlighted language), the reason that Tenant believes such changes are material or adverse (a "**Severed Lease Form Objection Notice**") (I) within fourteen (14) days after the delivery of the applicable Lease Severance Notice (together with drafts of the proposed Severed Lease and proposed Severed Lease Ancillary Documents) in the case of any of the first eight (8) Severed Leases in any rolling thirty (30) day period and (II) within twenty-eight (28) days after the delivery of such Lease Severance Notice (together with drafts of the proposed Severed Lease and proposed Severed Lease Ancillary Documents) in the case of any subsequent Severed Lease in such rolling thirty (30) day period. Upon Landlord' s receipt of a Severed Lease Form Objection Notice, Landlord may submit such dispute to binding arbitration in accordance with the provisions of Section 27.1; provided, however, that (AA) each of the five (5) Business Day periods referred to in Section 27.1(c) shall be reduced to six (6) days and (BB) the fourteen (14) day period referred to in Section 27.1(e) shall be reduced to seven (7) days, such that any such arbitration shall be completed and such arbitrator' s written decision shall be rendered in not more than twenty-one (21) days from the date of Landlord' s written Notice submitting such dispute to binding arbitration (such twenty-one (21) day period, the "**LS Dispute Resolution Period**"). If Tenant fails to deliver a Severed Lease Form Objection Notice with respect to any draft Severed Lease within the applicable time period set forth in clause (I) or clause (II) above, then Tenant shall be deemed to have irrevocably waived its right to object to any applicable changes to the Pre-Agreed Severed Lease Form reflected in such draft and shall be obligated to execute and deliver the applicable Severed Lease (together with the applicable Severed Lease Ancillary Documents in the forms described in this Section 1.9) by the applicable Lease Severance Deadline.

(c) Promptly following the execution and delivery of this Lease, the Parties shall cooperate in good faith to agree upon a ranked list of a minimum of six (6) and a maximum of ten (10) potential arbitrators for the arbitration of any dispute described in clause (b) above in accordance with the express provisions of this Section 1.9(c) and Section 27.1 (such list, the "**Arbitrator List**"). If the Parties are unable to agree upon both the Arbitrator List and the rankings of the arbitrators on such Arbitrator List by January 2, 2021, or if none of the individuals on any agreed-upon Arbitrator List is both disinterested (as more fully described below) and able to serve as an arbitrator of the applicable dispute at the time of such arbitration, then in any such case, any Party may submit such dispute to the Judicial Arbitration Mediation Service (**www.jamsadr.com**) or its successor organization in New York County, New York ("**JAMS**"), for the resolution of such dispute within the LS Dispute Resolution Period. If such dispute is so submitted to JAMS, then JAMS shall be the exclusive forum for the resolution of the applicable dispute. The Parties may modify the Arbitrator List by mutual agreement in writing from time to time. If Landlord submits a dispute with respect to a draft Severed Lease to arbitration (other than an arbitration pursuant to JAMS), such arbitration shall be conducted in accordance with the express provisions of this Section 1.9(c) and Section 27.1 by the arbitrator ranked highest on the Arbitrator List who is then available to conduct the same and is then disinterested (it being agreed that any arbitrator who has, or whose firm has, represented either Party or an Affiliate of either Party within the preceding five (5) years or who has a personal or financial stake in the outcome of the dispute shall be deemed not to be disinterested). If such highest-ranked arbitrator from the Arbitrator List is not available to conduct the arbitration or is not then disinterested, then the next-highest ranked arbitrator that is then available and then disinterested shall be selected. If no arbitrator on the Arbitrator List is then available and disinterested, or if the Parties have not agreed upon both the

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Arbitrator List and the rankings of the arbitrators on such Arbitrator List by January 2, 2021, then in either such case, such dispute shall be submitted to JAMS for the resolution of such dispute within the LS Dispute Resolution Period. If the applicable arbitrator (including JAMS, if applicable) pursuant to this Section 1.9(c) makes a determination with respect to the applicable dispute, then such determination shall be binding upon the Parties and shall not be appealable; provided, however, that Landlord, at its option upon Notice to Tenant following such determination, may elect to withdraw from the applicable Severed Lease the changes that were the subject of such dispute and to re-submit such Severed Lease in the form described in this Section 1.9 for Tenant' s execution and delivery. Tenant acknowledges and agrees that if Landlord withdraws the applicable disputed changes from a Severed Lease in accordance with the immediately preceding sentence, then Tenant shall remain obligated to execute and deliver such re-submitted Severed Lease by the applicable Lease Severance Deadline (if Landlord has removed such changes not later than the date that is at least two (2) Business Days prior to the applicable Lease Severance Deadline) and, if Landlord has not withdrawn such changes by such date, then Tenant shall remain obligated to execute and deliver such Severed Lease (without such disputed changes) within two (2) Business Days following the date on which Landlord withdraws such changes. If the applicable arbitrator (including JAMS, if applicable) pursuant to this Section 1.9(c) determines that any changes to a Severed Lease Form that are the subject of any applicable Severed Lease Form Objection Notice are material or adverse to Tenant, or if Landlord withdraws such disputed changes in accordance with this Section 1.9(c), then in either such case, Landlord shall pay the costs and expenses of the related arbitration, its own costs and expenses in connection with such arbitration, and Tenant' s Costs and Expenses in connection with such arbitration; if the applicable arbitrator (including JAMS, if applicable) pursuant to this Section 1.9(c) determines that any changes to a Severed Lease Form that are the subject of any applicable Severed Lease Form Objection Notice are not material or adverse to Tenant, then Tenant shall pay the costs and expenses of the related arbitration, its own costs and expenses in connection with such arbitration, and the Landlord' s Costs and Expenses in connection with such arbitration, and shall not later than two (2) Business Days following the issuance of a final written decision by the arbitrator, execute and deliver to Landlord the Severed Lease and the other Severed Lease Ancillary Documents in the form submitted by Landlord to Tenant. Notwithstanding anything to the contrary herein, the Parties agree that while an arbitration proceeding is pending pursuant to this Section 1.9(c), Tenant shall not be obligated to execute or deliver the applicable Severed Lease in dispute (or the accompanying Severed Lease Ancillary Documents). At any time during an arbitration proceeding, either side may concede an issue by informing the arbitrator of the concession, and the arbitrator will promptly issue a decision recognizing the concession. No such concession shall have any preclusive or evidentiary effect in any future arbitration or other proceeding.

(d) By the applicable Lease Severance Deadline, the Severed Tenant shall execute, acknowledge (if applicable) and deliver to the applicable Severed Landlord such Severed Lease and Severed Lease Ancillary Documents with respect to the applicable Severed Properties and, following Landlord' s request therefor in accordance with Sections 1.9(e) and 9.2(c), a copy of any applicable severed, amended or replacement Affiliate Sublease that shall affect the applicable Severed Properties from and after the applicable Lease Severance Date. At least one (1) Business Day prior to the applicable Lease Severance Date, Tenant shall use commercially reasonable efforts to deliver to Landlord invoices and other documentation reasonably requested by Landlord evidencing the Costs and Expenses incurred by Tenant in connection with the applicable Severed Lease and any other documentation required under this Section 1.9. Upon its

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receipt of such invoices and other documentation, Landlord shall pay or reimburse Tenant for all Costs and Expenses incurred by Tenant in connection with each applicable Severed Lease and Severed Lease Ancillary Documents. Each such Severed Lease shall: (i) be for a term that is equal to the then remaining Term; (ii) contain renewal options equivalent to any then remaining Renewal Options; (iii) be guaranteed and/or secured by (A) a new guaranty from the then current Lease Guarantors (a "**Severed Lease Supplemental Guaranty**"), (B) a new environmental indemnity agreement from the Severed Tenant and such Lease Guarantors (a "**Severed Lease Supplemental Environmental Indemnity Agreement**"), and (C) in the case (and only in the case) of a Multi-State Severed Lease, a new pledge agreement from the owners of the Equity Interests in the applicable Severed Tenant (a "**Severed Lease Supplemental Pledge Agreement**") (the Severed Lease Supplemental Guaranty, the Severed Lease Supplemental Environmental Indemnity Agreement and, as applicable, the Severed Lease Supplemental Pledge Agreement, collectively, the "**Severed Lease Ancillary Documents**"), in each case in the form and substance of the existing Lease Guaranty, the existing Environmental Indemnity Agreement and, if applicable, the existing Pledge Agreement, respectively, together with any revisions thereto as may be reasonably required by Landlord and Tenant to reflect the severed nature of such Severed Lease and Severed Properties; and (iv) except as expressly set forth in this Lease, be on the same terms and conditions as the terms and conditions of this Lease, subject, in each case, to the following terms and conditions:

(A) Effect of Lease Severance on Substitution Options. No Severed Lease shall contain any Substitution Options or Tenant' s Default Substitution Cure Rights and, effective as of any Lease Severance Date, the Reference Base Rent under this Lease shall (solely for the purpose of calculating the Maximum Substitution Limitation for each Permitted Substitution Period) be reduced by the Reference Base Rent Allocation Amounts of the applicable Severed Properties.

(B) Effect of Lease Severance on Tenant' s Go Dark Rights. No Severed Lease shall contain the continuous operation covenant set forth in Section 7.4 or otherwise prohibit the Severed Tenant from Going Dark at the applicable Severed Properties. Commencing from and after any Lease Severance Date, the aggregate Reference Base Rent Allocation Amounts of such Severed Properties shall be deducted, on a dollar-for-dollar basis, from any dollar amount then remaining under the Maximum Initial Go Dark Limitation basket for the then current Limited Go Dark Period (until such Maximum Initial Go Dark Limitation basket has been exhausted); provided, however, that (1) the aggregate Reference Base Rent Allocation Amounts for all Properties that become Severed Properties prior to the commencement of the First Limited Go Dark Period shall be deducted, on a dollar-for-dollar basis, from the dollar amount then remaining under the Maximum Initial Go Dark Limitation basket for such First Limited Go Dark Period, (2) if a Property became a Go Dark Trigger Property (excluding, for the avoidance of doubt, any Additional Go Dark Property) prior to the applicable Lease Severance Date, such that the Reference Base Rent Allocation Amount for such Property was already deducted from the applicable Maximum Initial Go Dark Limitation basket, then such Reference Base Rent Allocation Amount shall not be deducted pursuant to this sentence once such Property subsequently becomes a Severed Property, but such deduction of the Reference Base Rent Allocation Amount shall (for the avoidance of doubt) continue to count toward the applicable Maximum Initial Go Dark Limitation basket from and after such Lease Severance Date, and (3) if any such Severed Property is an Additional Go Dark Property that is subject to the Maximum Go Dark Additional Limitation pursuant to Section 7.4(d), then such Additional Go Dark Property shall cease to count toward such Maximum Go Dark Additional Limitation as of the Lease Severance Date for such Severed Property and (for the avoidance of doubt) shall also not be counted toward any Maximum Initial Go Dark Limitation basket.

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(C) Effect of Lease Severance on the No-Consent Sublease Basket. Each Severed Lease shall contain a "No-Consent Sublease Basket" (a "**Severed Lease No-Consent Sublease Basket**") equal to twenty-five percent (25%) of the Gross Leasable Square Footage of the Severed Properties demised to the Severed Tenant under such Severed Lease, which reflects an increase of ten percent (10%) to the No-Consent Sublease Basket otherwise applicable to the Properties under this Lease (that are not Severed Properties). In exchange for Landlord' s agreement to provide the Severed Tenant with such effective increase to the Severed Lease No-Consent Sublease Basket hereunder, upon any Lease Severance Date, the total amount of Gross Leasable Square Footage that is then remaining (if any) for No-Consent Subleases under this Lease' s No-Consent Sublease Basket shall be reduced by an amount equal to twenty percent (20%) of the Gross Leasable Square Footage of the Severed Properties demised to the Severed Tenant under the applicable Severed Lease (the "**20% Reduction Amount**"). Notwithstanding the foregoing, (1) if Tenant entered into a No-Consent Sublease at any Property prior to the Lease Severance Date for such Property, the Gross Leasable Square Footage of the portion of the to-be Severed Property subleased under such previously-executed No-Consent Sublease that reduced the No-Consent Sublease Basket under this Lease (when such No-Consent Sublease was entered into), shall be excluded from the 20% Reduction Amount, and there shall be no further deduction to reflect the previously-executed No-Consent Sublease from the No-Consent Sublease Basket under this Lease when such Property becomes a Severed Property, and (2) the Severed Lease No-Consent Sublease Basket shall be reduced by any new No-Consent Sublease (inclusive, for the avoidance of doubt, of any amendment to an existing No-Consent Sublease increasing the Gross Leasable Square Footage demised thereunder) entered into from and after the applicable Lease Severance Date, it being understood and agreed that all No-Consent Subleases entered into pursuant to this Lease prior to the Lease Severance Date shall only reduce the No-Consent Sublease Basket under this Lease, and shall not reduce the Severed Lease No-Consent Sublease Basket under the applicable Severed Lease. By way of example, if Tenant enters into a No-Consent Sublease prior to the Lease Severance Date covering 15,000 Gross Leasable Square Feet at a 100,000 Gross Leasable Square Feet Property, then: (A) such 15,000 Gross Leasable Square Feet shall count against the No-Consent Sublease Basket under this Lease (as and when such No-Consent Sublease is entered into); (B) upon a Lease Severance Date with respect to such Property, the No-Consent Sublease Basket under this Lease shall be further reduced by 17,000 Gross Leasable Square Feet (i.e., 20% of 85,000 Gross Leasable Square Feet); and (C) the Severed Lease No-Consent Sublease Basket applicable to No-Consent Subleases entered into under the applicable Severed Lease from and after such Lease Severance Date shall be 21,250 Gross Leasable Square Feet (i.e., 25% of 85,000 Gross Leasable Square Feet).

(D) Effect of Lease Severance on the Second Chance Sublease Waiting Period. Each Severed Lease shall contain a Second Chance Sublease Waiting Period of forty-five (45) days rather than ninety (90) days.

(E) Effect of Lease Severance on the ROFO Right and Related Rights. No Severed Lease shall contain the First Offer Rights, ROFO Rights, Modified ROFO Rights or General Marketing Inclusion Right of Tenant that have been terminated pursuant to the provisions of (and as provided in) Schedule 1.9(g)(v).

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(F) Effect of Lease Severance on Financial Reporting. The financial reporting obligations set forth in Section 20.21 shall be modified in each Severed Lease as follows:

(1) the applicable Severed Landlord shall not have the right under Section 20.21(a) to visit the applicable Severed Tenant' s central office to examine (or make copies of) its records and books of account;

(2) such Severed Landlord shall not have Management Meeting Rights;

(3) the applicable Severed Tenant shall only be required to deliver Annual Financial Statements or Quarterly Financial Statements to the applicable Severed Landlord if such Severed Landlord or its Affiliates are required to file, furnish or disclose such Annual Financial Statements or Quarterly Financial Statements pursuant to any federal securities laws (including, without limitation, the ' 34 Act or the ' 33 Act) or other Legal Requirements applicable to such Severed Landlord or its Affiliates; provided, however, that the foregoing shall not limit such Severed Tenant' s obligation to deliver to the Severed Landlord the Covenant Compliance Certifications on the terms and conditions set forth in this Lease;

(4) all references to the "Reporting Package" in this Lease (including clause (c) of Section 20.21) shall be replaced with references to the "Limited Reporting Package," and such Limited Reporting Package shall be delivered within the same time periods as the Reporting Package is required to be delivered; provided, however, that the Limited Reporting Package shall be deemed to be Tenant Confidential Information pursuant to the terms of such Severed Lease. As used herein, "**Limited Reporting Package**" means the financial information to be provided by a Severed Tenant to the applicable Severed Landlord in the form (and requiring the information) set forth on **Schedule 20.21-B**;

(5) clause (d)(i) of Section 20.21 shall be deleted in its entirety; provided, however, that, notwithstanding the foregoing, the 4-Wall EBITDAR and Sales Per Square Foot information (together with an Officer' s Certificate) in the format required by Section 20.21(d)(i) shall still be required to be delivered for each Severed Property, but only for such Severed Properties, within sixty (60) days following the end of each Fiscal Year as further described in the Limited Reporting Package; provided, further, that to the extent that Stratifications of 4-Wall EBITDAR and Sales Per Square Foot would be required pursuant to Section 20.21(c)(A), in lieu of providing such Stratifications itself, the Severed Tenant may include the required 4-Wall EBITDAR and Sales Per Square Foot information (on a Severed Property-by-Severed Property basis) in the Limited Reporting Package and the Severed Landlord may compile the Stratifications itself pursuant to Section 20.21(c)(A); and

(6) clause (d)(iii)(A) of Section 20.21 shall be deleted in its entirety.

For the avoidance of doubt, except to the extent that the financial reporting obligations under this Lease are expressly modified with respect to Severed Leases pursuant to this Section 1.9(d)(F), such financial reporting obligations shall be unmodified and shall apply with full force and effect to all Severed Tenants under Severed Leases.

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(G) Effect of Lease Severance on Outstanding Alterations Payables. Section 8.1(b) (relating to Outstanding Alterations Payables) shall be deleted in all Severed Leases in its entirety, and replaced with the following provisions (with references to "Landlord", "Tenant", the "Lease" and the "Property", respectively, under such provisions, being deemed to refer to the applicable Severed Landlord, Severed Tenant, Severed Lease and Severed Property subject to the applicable Severed Lease):

"Any request for Landlord' s consent to an Alteration under this Section 8.1(b) shall be accompanied by an Officer' s Certificate, pursuant to which Tenant shall certify either (i) that the Tangible Net Worth of the Lease Guarantors equals or exceeds the Reference Net Worth and specifying such Tangible Net Worth, (ii) that, in connection with the applicable Alteration or any other Alterations at the Property (or any other Properties subject to this Lease), no payables accrued by Tenant with respect to such Alteration(s) (excluding, for the avoidance of doubt, any payables that are the subject of a bona fide dispute conducted in accordance with any applicable provisions of Section 4.2) (collectively, "**Alterations Payables**") are more than sixty (60) days past due (and promptly following Landlord' s written request, Tenant shall provide any back-up documentation reasonably requested by Landlord with respect to such accrued payables), or (iii) that if Landlord requests the same, Tenant shall post security for the applicable Alteration as described below. In the event that Tenant fails to deliver a certification that complies with either clause (i) or clause (ii) above by the date that Landlord' s consent to the applicable Alteration is required, Landlord may condition its consent thereto upon Tenant' s agreement to deposit cash with a nationally recognized Title Company or another nationally recognized institutional third party depository selected by Landlord and reasonably approved by Tenant in an amount equal to one hundred ten percent (110%) of the cost of such Alteration (as reasonably estimated by Tenant and supported by any back-up documentation reasonably requested by Landlord, provided that in all events Tenant' s policies and practices for accruing amounts constituting Alterations Payables shall be consistent with the policies and practices of the Tenant Parties with respect to their other accounts payable) that is the subject of such request for Landlord' s consent, which cash shall be disbursed to Tenant periodically in the manner, and subject to similar conditions, as the Restoration Conditions, as applicable; provided, however, that (A) such cash shall be made available to Landlord for the completion of such Alteration in the event that Tenant fails to complete the same in accordance with the terms and conditions of this Lease and such failure continues beyond any applicable notice and cure periods, (B) in the event Tenant is completing such Alterations in accordance with the applicable terms and conditions of this Lease, amounts may, pursuant to an escrow arrangement reasonably acceptable to the Parties, be disbursed to Tenant periodically in the manner, and subject to similar conditions, as the Restoration Conditions, as applicable, and (C) following the completion of such Alteration by Tenant, any remaining deposited amount returned to Tenant upon the completion of such Alteration in accordance with the terms and conditions of this Lease so long as no Disabling Event then exists. Alternatively, Tenant may elect to deposit cash with Landlord (or, at Tenant' s option, to deliver to Landlord an irrevocable standby letter of credit in form and substance reasonably acceptable to Landlord and issued by a Qualified Financial Institution or other financial institution reasonably acceptable to Landlord), in each case in an amount equal to one hundred ten percent (110%) of the cost of such Alteration, which cash or letter of credit (1) may be drawn by Landlord for the completion of such Alteration in the event Tenant fails

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to complete the same in accordance with the applicable terms and conditions of this Lease and such failure continues beyond any applicable notice and cure periods, (2) in the event Tenant is completing such Alterations in accordance with the applicable terms and conditions of this Lease, Landlord shall, to the extent such letter of credit permits partial draws, permit partial amounts to be disbursed to Tenant periodically, pursuant to an escrow arrangement acceptable to Landlord, in the manner, and subject to similar conditions, as the Restoration Conditions, as applicable, and (3) shall be returned to Tenant upon the completion of such Alteration in accordance with such terms and conditions so long as no Disabling Event then exists."

In connection with the foregoing, all references to "**Outstanding Alterations Payables**" and the "**Outstanding Alterations Payables Threshold**" shall be deleted in Severed Leases.

(H) Effect of Lease Severance on Corporate Transactions. In connection with a Corporate Transaction for which Landlord' s consent is not required in accordance with Section 9.3(a), in lieu of giving the Severed Landlord at least thirty (30) days' advance Notice of such Corporate Transaction, each Severed Lease shall provide that Tenant shall be required to provide such Severed Landlord with Notice of such Corporate Transaction within thirty (30) days following such Corporate Transaction, together with a certification from Tenant that such Corporate Transaction did not require such Severed Landlord' s consent in accordance with Section 9.3(a). In addition, each Severed Lease shall provide that if, immediately following such Corporate Transaction, the Lease Guarantors will not have a Tangible Net Worth that is at least equal to the Reference Net Worth (and the Severed Landlord would otherwise have a consent right with respect to such Corporate Transaction under the applicable Severed Lease), Tenant shall obtain (I) the consent of Landlord under this Lease (for so long as this Lease is in effect), and (II) the consent of Severed Landlords under Severed Leases covering fifty percent (50%) or more of the aggregate Base Rent then payable under all then existing Severed Leases; provided, however, that in no event shall Tenant be obligated to obtain the consent of, in addition to the Landlord under this Lease, whose consent shall always be required so long as this Lease is in effect, other landlords (inclusive of all Severed Landlords) under this clause (II) holding more than, together with the Landlord under this Lease, two-thirds (2/3) of the Base Rent then payable under this Lease and all then existing Severed Leases. If the preceding conditions have been satisfied, then the consent of the applicable Severed Landlord shall not be required so long as Tenant delivers to such Severed Landlord an Officer' s Certificate pursuant to which Tenant shall certify that the requirements set forth in the foregoing clauses (I) and (II) have been satisfied. For the avoidance of doubt: (AA) as used in the preceding sentence, (1) "Severed Leases" shall include all Severed Leases hereunder and any leases that may be severed from such Severed Leases and any further severed leases, and (2) "Severed Landlords" shall include all Severed Landlords hereunder and any landlords under any such further severed leases; and (BB) if, immediately following any such Corporate Transaction, the Lease Guarantors will have a Tangible Net Worth that is at least equal to the Reference Net Worth, no Severed Landlord shall have a consent right over such Corporate Transaction. This paragraph addresses the contents of a Severed Lease; nothing in this paragraph alters any consent or approval requirements or obligations that may be required under the DC Master Lease, this Lease or any Severed Lease (except, in the case of each Severed Lease, as expressly provided in this Section 1.9(d)(H)).

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(I) Effect of Lease Severance on Certain Events of Default. If and only if the aggregate Reference Base Rent Allocation Amounts of the Severed Properties covered by a Severed Lease (which may contain one or more Severed Properties) are less than ten percent (10%) of the Reference Base Rent, then Section 13.1 shall be revised in each Severed Lease to:

(1) replace clause (g) in its entirety with the following:

"either (i) Tenant shall enter into a sublease of space in a Demised Premises in violation of the terms of this Lease (which sublease is not entirely revoked or rescinded by Tenant within thirty (30) days after Notice of such violation from Landlord), or (ii) Tenant shall assign this Lease or any Corporate Transaction shall occur, in each case, in violation of Article IX; provided, however, that any such violation pursuant to this Section 13.1(g)(ii) shall not be an Event of Default or Major Event of Default if the related Transfer violation shall be entirely revoked or rescinded by the applicable Tenant Party within thirty (30) days after the occurrence of such violation;"

(2) delete clause (l) in its entirety;

(3) replace the words "seven (7) days" with the words "fourteen (14) days" in clause (m); and

(4) replace the last sentence of clause (n) in its entirety with the following:

"As used herein, 'Major Event of Default' means an Event of Default specified in any of clauses (a)-(f), (g)(ii), (h), (j)-(k) and (m)."

(J) Effects of Lease Severance on Lease Severance Provisions. Each Severed Lease covering more than one Severed Property shall (1) contain the same "Lease Severance Deadlines" set forth in this Lease and (2) provide that the Severed Tenant' s failure to timely deliver Severed Leases and Severed Lease Ancillary Documents shall constitute an "Event of Default" and a "Major Event of Default" on the same terms and conditions set forth in this Lease (except as expressly modified by Section 1.9(d)(I) above); provided, however, that, for the avoidance of doubt and without limiting anything in Section 1.9(e), no failure of the Severed Tenant to timely deliver one or more further "Severed Leases" in accordance with the requirements of the applicable Severed Lease shall trigger an Event of Default or Major Event of Default (as applicable) under this Lease.

(K) Effect of Lease Severance on the BI Policy and BI Premium Cap. As provided in Section 11.1(c), from and after any Lease Severance Date, the BI Premium Cap under this Lease (as the same may be re-allocated to Severed Leases from time to time pursuant to the provisions below) shall be ratably allocated (or re-allocated, as applicable) among this Lease and the applicable Severed Lease(s) as follows: the BI Premium Cap under each of this Lease and any Severed Lease(s) shall be the product of (A) 0.0024746884 and (B) the Reference Base Rent Allocation Amounts of the applicable Properties then subject to this Lease or such Severed

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Lease(s), as applicable. Upon any Lease Severance Date, the applicable Severed Lease shall expressly set forth the dollar amount of the BI Premium Cap applicable to such Severed Lease. In the event that a Severed Landlord does not elect to require its Severed Tenant to obtain the BI Policy at any time, or from time to time, during the term of its Severed Lease, such Severed Landlord' s pro rata share of the BI Premium Cap shall not be re-allocated to this Lease or to any other Severed Lease.

(L) Effect of Lease Severance on the S&P Insurer Rating Cap. From and after any Lease Severance Date, the Severed Lease shall contain the obligation of the Severed Tenant to obtain insurance policies with the S&P Insurer Minimum Rating in the same manner as (and subject to same provisions as are set forth in) Section 11.4(c), but any excess expense obligation of the Severed Landlord shall be limited to any cost allocable to the Severed Properties on a pro rata basis based on the Base Rent Allocation Amounts of such Severed Properties and the total Base Rent payable under this Lease and all Severed Leases then existing.

(M) Other Effects of Lease Severance. Without limiting the foregoing, each Severed Lease shall contain appropriate adjustments (including to the Exhibits and Schedules hereto) to reflect that such Severed Lease only relates to the applicable Severed Properties, including, without limitation, the following:

(1) Base Rent. The initial Base Rent for each Severed Property shall be the then current Base Rent Allocation Amount thereof and thereafter during the term of such Severed Lease shall annually increase in the same manner in which Base Rent increases under this Lease.

(2) Tenant' s Proportionate Share. "Tenant' s Proportionate Share" under such Severed Lease shall continue to be calculated in the same manner as Tenant' s Proportionate Share under this Lease.

(3) Liabilities and Obligations. Such Severed Lease shall provide that the Severed Tenant shall be responsible for the payment, performance and satisfaction of all of Tenant' s duties, obligations and liabilities under this Lease with respect to the applicable Severed Properties from after the applicable Lease Severance Date (regardless of when such duties, obligations and liabilities accrue); provided, however, that to the extent that any such duties, obligations or liabilities are monetary in nature and accrue prior to the applicable Lease Severance Date and were not paid, performed and satisfied in full prior to such Lease Severance Date, the obligation of Tenant hereunder with respect thereto shall survive the termination of this Lease with respect to such Severed Properties on such Lease Severance Date and the Severed Tenant shall have no responsibility for the same.

(4) Amendments to this Lease. Effective as of the applicable Lease Severance Date, this Lease shall be deemed to be amended as follows: (I) the applicable Severed Properties shall be removed from this Lease and shall no longer be a part of the Demised Premises, and this Lease shall terminate with respect to such Severed Properties; and (II) the Base Rent and applicable Property Charges shall be adjusted, and except as set forth in the foregoing clause (3), Tenant' s obligations hereunder with respect to such Severed Properties shall terminate, in each case in accordance with (and subject to) Section 1.10.

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(5) Other Undertakings. Upon Landlord' s request (and at Landlord' s sole cost and expense), Tenant and/or any Severed Tenant shall execute and deliver new or amended memoranda of lease (or amendments or terminations of existing memoranda of lease) as are reasonably necessary or appropriate to effectuate fully the provisions and intent of this Section 1.9 and/or as any applicable Severed Landlord may reasonably request. In addition, upon Tenant' s request (and at Tenant' s sole cost and expense), Landlord shall deliver (or cause to be delivered) to Tenant an assignment and assumption agreement with respect to any collateral access agreements then in effect with respect to the applicable Severed Property(ies), or (if applicable) a supplemental collateral access agreement in accordance with (and subject to) the terms of Section 9.7, in each case, executed by the applicable Severed Landlord and, if applicable, Landlord.

(6) Monetary Thresholds and Baskets. For the avoidance of doubt, except as otherwise expressly provided in this Section 1.9(d) (including with respect to the Maximum Substitution Limitation, the Maximum Initial Go Dark Limitation and the No-Consent Sublease Basket) or elsewhere in this Lease, all other monetary thresholds, baskets and other similar limitations relating to the Demised Premises under this Lease shall, from and after the applicable Lease Severance Date, be determined separately with reference, respectively, to (I) as to each such Severed Lease, the applicable Severed Properties thereunder, and (II) as to this Lease, the Demised Premises remaining subject hereto.

(7) State-Specific Provisions. If applicable, the State Specific Provisions (solely to the extent the same are relevant to the applicable Severed Properties) shall be included in the applicable Severed Lease.

(e) No Severed Lease shall be cross-defaulted with this Lease or with any other Severed Lease. In addition, if, in connection with any Severed Lease, any Affiliate Sublease (including, without limitation, the Master Affiliate Sublease) exists that will remain in place as of the Lease Severance Date and affect the Severed Properties that are the subject of such Severed Lease and any other Properties remaining subject to this Lease, then Tenant shall (if requested by the applicable Severed Landlord or its lender), at no cost or expense to Landlord or the applicable Severed Landlord, (i) cause such Affiliate Sublease to be severed, amended or replaced with another Affiliate Sublease so that it shall only affect the applicable Severed Properties from and after such Lease Severance Date and (ii) deliver a copy of such severed Affiliate Sublease to Landlord and the applicable Severed Landlord promptly following Landlord' s request therefor. For the avoidance of doubt, the provisions hereof that condition the subordination of this Lease to any Landlord Financing Documents upon the delivery to Tenant of an SNDA shall be included in any such Severed Lease on the express terms and conditions herein set forth. If any Landlord Lender continues to have a lien on any Severed Property that is not released on the applicable Lease Severance Date, then Tenant shall cause Severed Tenant to execute, acknowledge and deliver, at Landlord' s or any applicable Severed Landlord' s expense, a new SNDA with respect to such Severed Lease, which new SNDA shall be on substantially the same terms and conditions as the applicable existing SNDA. In addition, if Landlord obtained a Ground Lease SNDA for the benefit of Tenant with respect to any Severed Property, then, provided no Disabling Event then

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exists, on or prior to the applicable Lease Severance Date, Landlord or the applicable Severed Landlord shall obtain a replacement Ground Lease SNDA for the benefit of the Severed Tenant, on substantially the same terms as such existing subordination, non-disturbance and attornment agreement; provided, however, that if any such Ground Lessor is not required under the terms of the applicable Ground Lease to provide a Ground Lease SNDA for the benefit of the Severed Tenant, then Landlord shall only be required to request and thereafter use commercially diligent efforts to obtain such a Ground Lease SNDA on such Lease Severance Date and, so long as such request has been made, no failure to obtain such Ground Lease SNDA shall be a condition precedent to the severance of the applicable Severed Property.

(f) As more fully described in Section 1.2 above, from and after any Lease Severance Date with respect to the applicable Severed Properties: (i) this Lease shall continue to constitute one single, unitary, indivisible lease of the entirety of the Demised Premises (excluding the Severed Properties) and not separate or severable leases governed by similar terms; (ii) the Demised Premises (excluding the Severed Properties) shall continue to constitute one indivisible economic unit, and the Base Rent (excluding the Base Rent allocable to the Severed Properties) and all other economic and other material lease provisions have been extensively negotiated and agreed to, based on the understanding and agreement of the Parties (and each of the Parties has entered into this Lease in reliance thereon, and it is a material inducement to each of them), that the demise of all of the Demised Premises (excluding the Severed Properties) to Tenant herein is a single, unitary, indivisible, composite, and inseparable transaction; (iii) except for any subsequent Severed Lease created pursuant to the express terms of this Section 1.9 and except as otherwise expressly provided in this Lease with respect to any other term or provision hereof for specific purposes (and then only to the extent expressly so provided), all provisions of this Lease shall continue to apply equally and uniformly to the entire Demised Premises (excluding the Severed Properties) as one indivisible unit; and (iv) each of Landlord and Tenant intend that this Lease shall continue to be, and the provisions of this Lease shall at all times continue to be construed, interpreted and applied so as to carry out their mutual objective to create a single, unitary, indivisible lease of the entire Demised Premises (excluding the Severed Properties) and, in particular but without limitation, that, for purposes of 11 U.S.C. Section 365, or any successor or replacement thereof or any analogous state law, or any attempt thereunder to assume, reject or assign this Lease in whole or in part, this Lease is one indivisible and non-severable lease and executory contract dealing with one legal and economic unit and that this Lease must be assumed, rejected or assigned as a whole with respect to the entirety (and only as to the entirety) of the Demised Premises (excluding the Severed Properties).

(g) At all times during the Term, provided that no Disabling Event then exists, in connection with any sale or contemplated sale of: (i) any Non-S/B Landlord Option Property, such sale shall be subject to the First Offer Right pursuant to the provisions of Schedule 1.9(g)(i); (ii) any S/B Landlord Option Property, such sale shall be subject to the ROFO Right pursuant to the provisions of Schedule 1.9(g)(ii); (iii) any S/B Non-Landlord Option Property, such sale shall be subject to the Modified ROFO Right pursuant to the provisions of Schedule 1.9(g)(iii); and (iv) any Property, Landlord shall extend to Tenant the General Marketing Inclusion Right; provided, however, that the Parties acknowledge and agree that (A) no First Offer Right, ROFO Right or Modified ROFO Right shall apply to a Property that is a Re-Classified Landlord Option Property and (B) subject to the After-Acquired S/B Property Basket and the other applicable terms and conditions of this Lease (including Landlord' s right to make a Modified ROFO Right Designation

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Election with respect to any Landlord Option Property), any sale of an After-Acquired S/B Property (including, if applicable, any Potential Taubman S/B Property) that is also an S/B Non-Landlord Option Property shall be subject to the Modified ROFO Right (and not, for the avoidance of doubt, the First Offer Right, the ROFO Right or the General Marketing Inclusion Right, as applicable).

1.10 **Effect of Property Termination.** If this Lease terminates with respect to all or any portion of the Demised Premises (including, for the avoidance of doubt, the Landlord Retained Portion of any Tenant Option Property) (each, a "**Terminated Property**") pursuant to or as a result of (a) Tenant' s exercise of any Tenant Option, (b) Landlord' s exercise of any Landlord Option, or (c) any Major Casualty, Major Condemnation, Renewal Kick Out Option, GL Termination Date with respect to a Ground Leased Property (but not, for the avoidance of doubt, any acquisition by Landlord of the fee simple estate with respect to any Ground Leased Property pursuant to a Ground Lease Purchase Option, which shall be governed by Section 1.4(b)), substitution of a Replaced Property pursuant to Section 1.7, severance of the Lease pursuant to Section 1.9, or purchase of a Property by Tenant (or its Designated Affiliate) pursuant to Schedule 1.9(g) (each of the foregoing, a "**Property Termination**"), then from and after the Property Termination Date with respect to such Terminated Property:

(i) on such Property Termination Date, Tenant shall pay to Landlord the full amount of any Rent that remains outstanding with respect to such Terminated Property (and the Parties shall prorate and adjust any Rent to the extent necessary with respect to any amounts that may have been prepaid or underpaid by Tenant, and shall finally adjust any such amounts not known or ascertainable on such Property Termination Date promptly after such amounts have been determined);

(ii) the Base Rent shall be reduced by the Base Rent Allocation Amount (or, in the case of a Tenant Option Property as to which a Partial TO Termination has occurred, the Pro Rata Portion thereof allocable to the applicable Landlord Retained Portion) for such Terminated Property;

(iii) Tenant and the Lease Guarantors shall be released from any other obligations under the Lease Documents to which each is a party, including Tenant' s obligation to pay Property Charges (subject, with respect to the Environmental Indemnity Agreement, to the express survival provisions thereof) that, in each case, first arise or accrue from and after such Property Termination Date and solely relate to such Terminated Property; and

(iv) this Lease shall otherwise remain unmodified and in full force and effect, Tenant hereby acknowledging and agreeing that, except for the adjustments to Tenant' s obligations expressly set forth in the foregoing clauses (ii) and (iii), any such Property Termination shall not affect this Lease or any terms hereof as the same related to (A) the remainder of the Demised Premises or (B) any Surviving Obligations (including with respect to such Terminated Property).

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ARTICLE II
DEFINITIONS

2.1 **Definitions**. For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (a) the terms defined in this Article II have the meanings assigned to them in this Article and include the plural as well as the singular; (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; (c) all references in this Lease to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease; (d) the word "including" or any variation thereof shall mean "including, without limitation" or the applicable variation thereof; (e) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision; and (f) for the calculation of the Guarantor Financial Covenants and any other financial ratios or tests set forth in this Lease, this Lease, regardless of its treatment under GAAP, shall be deemed to be an operating lease and the Rent shall be treated as an operating expense and shall not constitute Indebtedness or interest expense.

"**33 Act**": The Securities Act of 1933, as amended.

"**34 Act**": The Securities Exchange Act of 1934, as amended.

"**4 Wall EBITDA**": With respect to any Demised Premises for any period, the "unallocated store contribution profit" from the operations of such Demised Premises (on a Demised Premises-by-Demised Premises or "four wall" basis) for such period, calculated consistent with past practice (and reflected as "4 Wall EBITDA" on the "Store P&L" reports that Tenant' s Predecessor delivered to GLAS USA LLC and/or GLAS Americas LLC pursuant to that certain Superpriority Senior Secured Debtor-in-Possession Credit and Guaranty Agreement, dated as of June 8, 2020).

"**4 Wall EBITDAR**": With respect to any Demised Premises for any period, the 4 Wall EBITDA for such Demised Premises for such period, adjusted by excluding the amount of Rent (which may be determined on an accrual basis) included in the calculation of such 4 Wall EBITDA.

"**5% Threshold**": As defined in Section 8.1(a).

"**10% Threshold**": As defined in Section 8.1(a).

"**10% Threshold Election**": As defined in Section 8.1(a).

"**15% Base Rent Threshold**": As defined in Section 13.1(g).

"**20% Reduction Amount**": As defined in Section 1.9(d)(C).

"**AAA**": As defined in Section 27.1(a).

"**ABL Facility**": The asset-based lending facility evidenced by that certain Credit Agreement, dated as of the date hereof, by and among Tenant' s Parent (and/or certain of its Subsidiaries), collectively, as borrower, the lenders from time to time party thereto, and Wells Fargo Bank, National Association, as administrative agent and collateral agent, as the same may be amended, restated, supplemented or modified in accordance with its terms, or as the same may be refinanced, from time to time.

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"**Accelerated Landlord Option Election**": As defined in Section 7.4(g).

"**Accelerated Landlord Option Notice**": As defined in Section 7.4(g).

"**Accelerated Landlord Option Property**": As defined in Section 7.4(g).

"**Acceptable Accounting Firm**": As defined in the definition of "Annual Financial Statements".

"**Acceptable Credit Facility**": Each of (a) the ABL Facility and (b) such other credit facilities as may be obtained from time to time by any Tenant Party as a borrower, debtor or other obligor from third party lenders on arms' length terms and pursuant to market standard loan agreements, indentures and/or credit documents.

"**Acceptable Credit Facility Lender**": The lender(s), administrative agent(s) and/or collateral agent(s), as applicable, under an Acceptable Credit Facility.

"**Acceptable Title Condition**": As defined in Schedule 1.9(g)(vi).

"**ACH**": As defined in Section 3.4.

"**ADA**": The Federal Americans with Disabilities Act (as amended) and other similar Legal Requirements relating to persons with disabilities.

"**Additional Deposit**": As defined in Schedule 1.9(g)(i)(2).

"**Additional Go Dark Properties**": As defined in Section 7.4(d).

"**Additional Rent**": As defined in Section 3.2.

"**Affiliate**": With respect to any Person, any other Person that, directly or indirectly, Controls, is Controlled by or is under common Control with such Person. The term "**Affiliated**" shall have the correlative meaning.

"**Affiliate Subleases**": As defined in Section 9.2(a).

"**After-Acquired S/B Properties**": As defined in the definition of "S/B Properties".

"**After-Acquired S/B Property Basket**": As defined in the definition of "S/B Properties".

"**After-Divested S/B Properties**": As defined in the definition of "S/B Properties".

"**Agreed PSA Procedure**": As defined in Schedule 1.9(g)(i)(2).

"**All-Risk Insurance**": As defined in Section 11.1(a).

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"**Alterations**": As defined in Section 8.1(a).

"**Alterations Payables**": As defined in Section 1.9(d)(G).

"**Alterations Fair Market Rent**": As defined in Section 1.3(c).

"**Alterations Threshold**": As defined in Section 8.1(a).

"**Amortization Period**": As defined in Section 8.3(b).

"**Annual Capex Plan**": As defined in Section 8.3(a).

"**Annual Financial Statements**": For any Fiscal Year, consolidated statements of Tenant' s Parent and its Subsidiaries' income, stockholders' equity and cash flows for such Fiscal Year and the related consolidated balance sheet as of the end of such Fiscal Year, together with all notes thereto (if applicable), and together with statements of Consolidated Adjusted EBITDA, in each case in reasonable detail and setting forth in comparative form the corresponding figures for the preceding Fiscal Year, prepared in accordance with GAAP (other than the aforementioned statements of Consolidated Adjusted EBITDA) and audited by one of the "big four" accounting firms or another nationally recognized accounting firm selected by Tenant' s Parent and reasonably acceptable to Landlord (an "**Acceptable Accounting Firm**"). All Annual Financial Statements shall be accompanied by a narrative report describing the operations of Tenant' s Parent and its Subsidiaries in the form prepared for presentation to the senior management of Tenant' s Parent for the applicable Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Year.

"**Applicable Acceleration Amount**": As defined in Section 13.3(c)(ii).

"**Applicable Subleases**": As defined in Section 9.2(c).

"**Applicable Terms**": As defined in Section 7.3(h).

"**Apportioned LO Capex Costs**": As defined in Section 8.3(e).

"**Approved NDA Form**": As defined in Section 20.21(e).

"**Approved Restoration Contract**": As defined in Section 12.5(a)(i).

"**Approved SNDA Form**": As defined in Section 14.1.

"**Arbitration Rules**": As defined in Section 27.1(a).

"**Arbitrator List**": As defined in Section 1.9(c).

"**Asset Purchase Agreement**": That certain Asset Purchase Agreement, dated as of October 28, 2020, by and among Tenant' s Predecessor, Copper Retail JV LLC, Copper BidCo LLC and the other parties thereto.

"**Asset Purchaser**": As defined in the definition of "Asset Sale".

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"**Asset Sale**": With respect to any Person, the direct or indirect sale, assignment, conveyance, transfer or other disposition of all or substantially all of the business or assets (including real property assets) of such Person, whether held directly or through one or more Subsidiaries of such Person, to any other Person (an "**Asset Purchaser**") in one transaction or in a series of related transactions.

"**Award**": All compensation, sums or anything of value awarded, paid or received or payable in connection with any Condemnation.

"**Bankruptcy Code**": As defined in Section 3.5.

"**Bankruptcy Laws**": As defined in Section 13.1(d)(iii).

"**Base Month**" As defined in the definition of "CPI Increase".

"**Base Rent**":

(a) During the Initial Term, an annual amount equal to One Hundred Twenty-One Million Two Hundred Twenty-Seven Thousand Three Hundred Eighty-Two Dollars ($121,227,382), as the same may be adjusted from time to time in accordance with the express terms and provisions of this Lease;

(b) Commencing on the third (3rd) anniversary of the Commencement Date, and thereafter on each subsequent anniversary of the Commencement Date during the Term (each, a "**Base Rent Adjustment Date**"), the Base Rent shall be adjusted in accordance with this clause (b) as follows: the annual Base Rent payable immediately prior to such Base Rent Adjustment Date shall be increased by an amount equal to the product of such Base Rent multiplied by the CPI Increase; provided, however, that in no event shall any such annual adjustment (i) result in a percentage increase in the then-applicable Base Rent that is greater than two percent (2%); or (ii) result in a decrease in the then-applicable Base Rent; provided, further, that "Base Rent" shall exclude (x) solely for purposes of this sentence, any Excess Amount for the first four (4) years after such Excess Amount becomes payable by Tenant pursuant to Section 1.4 (it being agreed that after such initial four (4) year period, such Excess Amount shall be included in "Base Rent" for purposes of this sentence), and (y) the Base Rent Allocation Amounts (or, following a Partial Property Termination Date with respect to any Tenant Option Properties, the Pro Rata Portions thereof allocable to the applicable Landlord Retained Portions) of any Terminated Properties. Landlord shall deliver Notice to Tenant of the new annual Base Rent on or before the tenth (10th) Business Day preceding each Base Rent Adjustment Date, but in the event of any failure of Landlord to do so, (A) such failure shall not be (or be deemed to be) a waiver by Landlord of Landlord' s right to collect such sums, provided that Tenant shall not be obligated to pay any increased Base Rent pursuant to this clause (b) until the date that is ten (10) Business Days from the date on which Landlord delivers such Notice and (B) upon such tenth (10th) Business Day following Landlord' s Notice, Tenant shall pay to Landlord the full amount of such increased Base Rent due hereunder for the period from the Base Rent Adjustment Date through the date of Landlord' s delivery of such Notice, which amount shall be set forth in Landlord' s Notice and take into account any Base Rent previously paid by Tenant for such period; and

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(c) During each Lease Year in any Renewal Term, an annual amount equal to the greater of (i) the Base Rent for the immediately preceding Lease Year (without taking into account any Excess Amount that is payable by Tenant pursuant to Section 1.4 and as the same may have been adjusted by subtracting the Base Rent Allocation Amounts (or, in the case of any Tenant Option Properties as to which a Partial TO Termination has occurred, the Pro Rata Portions thereof allocable to the applicable Landlord Retained Portions) of any Terminated Properties) and (ii) the Fair Market Rent for such Renewal Term, as determined in accordance with the provisions of Section 1.3(c), as the same may be adjusted from time to time in accordance with the express terms and provisions of this Lease.

"**Base Rent Adjustment Date**": As defined in the definition of "Base Rent".

"**Base Rent Allocation Amount**": With respect to any Demised Premises or Property, the allocable amount of Base Rent applicable to such Demised Premises or Property as set forth on Exhibit B, as the same may be adjusted pursuant to the terms of this Lease (including as set forth in clauses (b) and (c) of the definition of "Base Rent").

"**Baybrook Property**": That certain real property commonly referred to as Store No. 2844, located at Baybrook Mall, 100 Baybrook Mall, Friendswood, Texas, demised to Tenant' s Predecessor (or one of its Affiliates) pursuant to the Ground Lease more particularly described on Schedule 1.4(a) attached hereto and made a part hereof.

"**Baybrook/Coral Ridge Closing**": As defined in Section 7.3(d).

"**Baybrook/Coral Ridge Counterparty**": As defined in Section 7.3(d).

"**Baybrook/Coral Ridge Go Dark Event**": As defined in Section 7.3(d).

"**Baybrook/Coral Ridge Lockout Period**": As defined in Section 7.3(d).

"**Baybrook/Coral Ridge Property**": As defined in Section 7.3(d).

"**Baybrook/Coral Ridge Property Document**": As defined in Section 7.3(d).

"**Best Insurer Rating**": As defined in Section 11.4(c).

"**BI Policy**": As defined in Section 11.1(c).

"**BI Policy Quote**" or "**BI Policy Quotes**": As defined in Section 11.1(c).

"**BI Premium Cap**": As defined in Section 11.1(c).

"**BI Share**": As defined in Section 11.1(c).

"**Binding PSA**": As defined in Schedule 1.9(g)(i)(2).

"**BOMA Measurement Standard**": With respect to any Demised Premises as of any date of determination, the then current Standard Methods of Measurement from the Building Owners and Managers Association International, as the same is applicable to the particular use of such Demised Premises as of such date of determination.

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"**Bond**": As defined in Section 20.17.

"**BOV**": As defined in Section 1.7(c)(iii)(1).

"**Broker**": As defined in Section 21.1.

"**Brookfield**": Brookfield Asset Management Inc., together with its successors.

"**Business Day**": Each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which national banks in the City of New York, New York, are authorized, or obligated, by law or executive order, to close.

"**CAM Expenses**": As defined in Section 3.2(a)(iv)(A).

"**Capital Expenditures**": With respect to any Demised Premises or Property, improvements and replacements that are properly capitalized in accordance with GAAP.

"**Cash**": Cash and cash equivalents and all instruments evidencing the same or any right thereto and all proceeds thereof.

"**Casualty**": Any loss of or damage to or destruction of all or any portion of the Demised Premises.

"**Casualty Termination Amount**": As defined in Section 12.2(c).

"**Casualty Termination Date**": As defined in Section 12.2.

"**Change of Control**": The occurrence of any transaction or series of related transactions the result of which is that any Person or "group" (within the meaning of Section 13(d) or Section 14(d) of the ' 34 Act), directly or indirectly, acquires Control of any Tenant Party.

"**Claims**": As defined in Section 15.1(a).

"**Code**": The Internal Revenue Code of 1986 and, to the extent applicable, the Treasury Regulations promulgated thereunder, each as amended from time to time.

"**Commencement Date**": As defined in Section 1.3(a).

"**Common Areas**": The sidewalks, walkways, alleyways, connecting tunnels, passageways and entranceways to third-party properties, utility pipes, conduits and lines, service drives, parking aisles, driveways, doorways, parking lots, parking areas and other external shared or common areas that exist from time to time on or adjacent to any Properties or Demised Premises, including such areas as any owner of any applicable Shopping Center may make available or designate (whether pursuant to an REA or otherwise) as areas for use by Landlord or Tenant in common with any other occupants and/or owners of space in such Shopping Center; provided, however, that from and after the Partial Property Termination Date with respect to any Tenant

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Option Property, "Common Areas" shall also include such stairwells, elevators, escalators, store rooms, restrooms and other similar facilities as are located wholly within or exclusively serving such Tenant Option Property but which the Parties mutually designate in the applicable Final TO Plans as "Common Areas", subject to all applicable Property Requirements. Notwithstanding the foregoing, other than to the extent expressly set forth in the immediately preceding sentence with respect to any Tenant Option Property from and after the applicable Partial Property Termination Date (if any), (a) all areas and facilities which would otherwise constitute "Common Areas", but which are located wholly within and/or exclusively serve any Property shall be deemed to be a part of such Demised Premises, subject to all terms and conditions of this Lease, and (b) all areas and facilities which would otherwise constitute "Common Areas", but which are located wholly within and/or exclusively serve any Landlord Retained Portion of a Tenant Option Property shall be deemed to be a part of such Landlord Retained Portion, subject to all terms and conditions of this Lease.

"**Condemnation**": (a) Any taking of all or a portion of any Demised Premises (i) in or by condemnation or other eminent domain proceedings pursuant to any applicable Legal Requirements, (ii) by reason of any agreement with any condemning authority in settlement of or under threat of any such condemnation or other eminent domain proceeding, or (iii) by any other means; (b) any de facto condemnation; or (c) any Temporary Condemnation. A Condemnation shall be considered to have taken place as of the date actual physical possession is taken by the condemning authority, regardless of the date on which the right to compensation and damages accrues under applicable Legal Requirements.

"**Condemnation Termination Date**": As defined in Section 12.4(b).

"**Consent Dispute**": As defined in Section 27.1.

"**Consolidated Adjusted EBITDA**": As defined in the OpCo Credit Agreement (which defined term shall, in the event the OpCo Credit Agreement is no longer in effect, nonetheless continue to apply).

"**Construction Professionals**": As defined in Section 12.1(a)(ii).

"**Construction Standards**": Those certain terms, conditions and requirements set forth on Schedule 8.1(b) attached hereto.

"**Contested Violation**": As defined in Section 4.2.

"**Continuing Guarantors**": As defined in Section 9.3(a).

"**Control**": With respect to any Person, (a) the ownership of more than fifty percent (50%) of the Equity Interests of such Person or (b) the power (whether or not exercised) to elect a majority of the directors of such Person or to exercise voting control of such Person or to otherwise direct or cause the direction of the management and policies of such Person through the ownership of Equity Interests, whether by contract or otherwise. Notwithstanding the foregoing, Control shall not be deemed to be absent with respect to any Person solely because another Person shall have the right to approve, consent to or veto one or more "major decisions". The terms "**Controlled by**", "**Controlling**" and "**under common Control with**" shall have their respective correlative meanings.

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"**Control Transferee**": With respect to a Change of Control as to any Person, the Person acquiring Control of such Person in connection therewith.

"**Coral Ridge Property**": That certain real property commonly referred to as Store No. 2758, located at Coral Ridge Mall, 1471 Coral Ridge Avenue, Coralville, Iowa.

"**Corporate Transaction**": Any Asset Sale, Change of Control, Division or Merger.

"**Costs and Expenses**": With respect to either Party' s right to be reimbursed for its cost and expenses under this Lease, the reasonable, documented and out-of-pocket costs and expenses (including reasonable out-of-pocket attorneys' fees) reasonably incurred by such Party in connection with the applicable matter.

"**Counteroffer Acceptance Notice**": As defined in Schedule 1.9(g)(iii)(1).

"**Counterparty**": As defined in Section 7.3(a).

"**Counterparty FMV**": As defined in Section 7.3(d).

"**Counterparty Protection Notice**": As defined in Section 7.3(a).

"**Counterparty Purchase Price**": As defined in Section 7.3(d).

"**Covenant Compliance Certification**": As defined in Section 20.21(b).

"**CPI**": Consumer Price Index for All Urban Consumers, United States City Average, All Items, Not Seasonally Adjusted, 1982-84=100, or any successor to such index, appropriately adjusted, or if no such index or successor index shall be published, such similar index, appropriately adjusted, as shall reasonably be designated by Landlord and reasonably acceptable to Tenant.

"**CPI Increase**": As of any Base Rent Adjustment Date, the percentage increase (rounded to two decimal places), if any, in (a) the CPI published for the month (the "**Base Month**") ending three months prior to the calendar month in which the Base Rent Adjustment Date occurs over (b) the CPI published for the calendar month that is 12 months prior to the Base Month.

"**Current Title Policy**": As defined in Section 1.5(b)(i).

"**DC Landlord**": Individually and collectively, J. C. Penney Corporation, Inc., a Delaware corporation, and J. C. Penney Properties, LLC, a Delaware limited liability company, together with their respective successors and/or assigns.

"**DC Master Lease**": That certain Distribution Center Master Lease, dated as of the Commencement Date, by and between DC Landlord, as landlord, and Penney Tenant II LLC, as tenant, as the same may be amended, supplemented or otherwise modified from time to time.

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"**DC Properties**": The six (6) distribution center properties owned by DC Landlord, as applicable, and leased to Penney Tenant II LLC pursuant to the DC Master Lease.

"**Deemed Approval Procedure**": With respect to any applicable matter with respect to which any Party (the "**Requesting Party**") requires the consent or approval of the other Party (the "**Responding Party**"), that the Responding Party' s consent or approval (as applicable) shall be deemed given if:

(a) the Requesting Party' s request for such consent or approval shall be in an envelope marked "PRIORITY" and shall contain the following bold-faced, conspicuous (i.e., in a font size that is not less than fourteen (14) point) legend at the top of the first page thereof: "FIRST NOTICE: THIS IS A REQUEST FOR APPROVAL OR CONSENT PURSUANT TO SECTION OF THAT CERTAIN RETAIL MASTER LEASE AMONG J. C. PENNEY CORPORATION, INC., J. C. PENNEY PROPERTIES, LLC, JCPENNEY PUERTO RICO, INC. AND PENNEY TENANT I LLC. IF YOU FAIL TO PROVIDE A SUBSTANTIVE RESPONSE (E.G., APPROVAL, DENIAL OR REASONABLE AND GOOD FAITH REQUEST FOR CLARIFICATION OR MORE INFORMATION TO THE EXTENT THAT SUCH CLARIFICATION OR ADDITIONAL INFORMATION IS REASONABLY NECESSARY TO EVALUATE THIS REQUEST) TO THIS REQUEST FOR APPROVAL IN WRITING WITHIN FIFTEEN (15) DAYS, YOUR FAILURE MAY RESULT IN THE REQUEST BEING DEEMED APPROVED OR GRANTED", and shall be accompanied by any additional documentation as may be required pursuant to the express terms of this Lease; and

(b) the Responding Party fails to substantively respond to such request in writing within such initial fifteen (15) day period, and a second notice requesting approval is delivered by the Requesting Party to the Responding Party in an envelope marked "PRIORITY" and containing the following bold-faced, conspicuous (i.e., in a font size that is not less than fourteen (14) point) legend at the top of the first page thereof: "SECOND AND FINAL NOTICE: THIS IS A REQUEST FOR APPROVAL OR CONSENT PURSUANT TO SECTION OF THAT CERTAIN RETAIL MASTER LEASE AMONG J. C. PENNEY CORPORATION, INC., J. C. PENNEY PROPERTIES, LLC, JCPENNEY PUERTO RICO, INC. AND PENNEY TENANT I LLC. IF YOU FAIL TO PROVIDE A SUBSTANTIVE RESPONSE (E.G., APPROVAL, DENIAL OR REASONABLE AND GOOD FAITH REQUEST FOR CLARIFICATION OR MORE INFORMATION TO THE EXTENT THAT SUCH CLARIFICATION OR ADDITIONAL INFORMATION IS REASONABLY NECESSARY TO EVALUATE THIS REQUEST) TO THIS REQUEST FOR APPROVAL IN WRITING WITHIN FIVE (5) BUSINESS DAYS, YOUR APPROVAL OR CONSENT SHALL BE DEEMED GIVEN" and the Responding Party again fails to provide a substantive response to such request in writing within such additional five (5) Business Day period.

"**Default Rate**": On any date, an annual rate equal to five (5) percentage points (5%) above the Prime Rate, but in no event greater than the maximum rate then permitted under applicable Legal Requirements.

"**Default Substitution Election**": As defined in Section 13.1(o).

"**Defaulted Property**": As defined in Section 13.1(o).

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"**Deficiency Amount**": As defined in Section 12.5(a)(iii).

"**Demised Premises**": As defined in Section 1.1.

"**Designated Affiliate**": Any Affiliate of Tenant, of Brookfield or of Simon.

"**Developer**": As defined in Section 7.3(a).

"**Development Actions**": With respect to any Shopping Center (a) alterations, expansions or additions to the buildings comprising such Shopping Center (other than the applicable Demised Premises); (b) modifications to the Common Areas relating to such Shopping Center (other than any Common Areas that are from time to time exclusively allocated to the applicable Property); (c) modifications to "ring roads" and other points of access to such Shopping Center; (d) the installation, removal or modification of, and other decisions related to, any signage; (e) decisions related to the branding of such Shopping Center; (f) expansions of or changes to the uses permitted within such Shopping Center; and/or (g) decisions relating to the location of kiosks and retail merchandising units, or to the other use of Common Areas (other than any Common Areas that are from time to time exclusively allocated to the applicable Property), in such Shopping Center.

"**Development Parameters**": As defined in Section 8.1(c).

"**Development Parcels**": As defined in Section 8.1(c).

"**Disabling Event**": Either (a) the existence of a Major Event of Default or (b) in connection with the exercise of any right or privilege of Tenant under this Lease, or the obligation of Landlord to perform any obligation for, or extend any right or benefit to, Tenant under this Lease that, in each case, is specific to a particular Property, the existence of an Event of Default with respect to such Property.

"**Disbursement Request**": As defined in Section 12.1(a).

"**Discretionary Terms**": As defined in Section 1.4(b).

"**Dispute**": As defined in Section 27.1

"**Division**": With respect to any Person that is a limited liability company organized under the laws of the State of Delaware, the division of such Person into two (2) or more Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under (a) Section 18-217 of the Delaware Limited Liability Company Act, (b) Section 17-220 of the Delaware Revised Uniform Limited Partnership Act or (c) any analogous action taken pursuant to any other applicable law.

"**Division Principles**": As defined in Section 1.6(b)(ii).

"**dollars**" and "**$**": The lawful money of the United States.

"**EBITDAR to Rent Ratio**": With respect to any Demised Premises for any period, the ratio of (a) the 4 Wall EBITDAR of such Demised Premises for such period (taking into account

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any revenue and/or reimbursements of expenses received by Tenant pursuant to any Third Party Subleases with respect to such Demised Premises during such period) to (b) the Rent (which may be determined on an accrual basis and shall include the Base Rent Allocation Amount and any rent payable under a Ground Lease) attributable to such Demised Premises for such period.

"**Emergency Capex**": As defined in Section 8.3(d).

"**Emergency Capex Notice**": As defined in Section 8.3(d).

"**Encumbrance**": Any lien, encumbrance, claim, charge, mortgage, deed of trust, deed to secure debt, option, pledge, security interest or similar interest, title exception, hypothecation, easement, right of way, encroachment, judgment, covenant, conditional sale or other title retention agreement and other similar imposition, imperfection or defect of title or restriction on transfer or use.

"**Environmental Event**": As defined in the Environmental Indemnity Agreement.

"**Environmental Indemnity Agreement**": (a) The Initial Environmental Indemnity Agreement and (b) any Replacement Environmental Indemnity Agreement, as the same may be amended, supplemented or otherwise modified from time to time with Landlord' s prior written consent or otherwise in accordance with the terms of this Lease.

"**Environmental Laws**": Any and all federal, state, municipal and local laws, statutes, ordinances, rules, regulations, binding guidance or policies, orders, decisions, determinations, decrees or judgments, whether statutory or common law, as amended from time to time, now or hereafter in effect, or promulgated, pertaining to pollution, the environment, natural resources, public health and safety and industrial hygiene (in each case, as the same relate to Hazardous Substances), including the management, use, generation, manufacture, labeling, registration, production, storage, release, discharge, spilling, leaking, emitting, injecting, escaping, abandoning, dumping, disposal, handling, treatment, removal, decontamination, cleanup, transportation or regulation of or exposure to any Hazardous Substance, including the Industrial Site Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act (as it relates to Hazardous Substances).

"**EOD Termination**": As defined in Section 13.2(a).

"**EOD Termination Date**": As defined in Section 13.2(a).

"**Equity Interests**": With respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interests or participations that confer on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

"**Estimated Cost**": As defined in Schedule 8.1(a)(d).

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"**Estoppel Certificate**": A certificate of Tenant or Landlord, as the case may be, in the form attached hereto as **Exhibit E**, signed by an officer, managing member, managing or general partner or another representative of such party who is authorized to so sign the same.

"**Event of Default**": As defined in Section 13.1.

"**Excepted Liens**": As defined in Section 1.5(b)(i).

"**Excess Amount**": As defined in Section 1.4(b).

"**Excess Deductible Amount**": As defined in Section 11.2.

"**Excess Non-Structural Alterations**": As defined in Section 8.1(a).

"**Excluded Cessation**": As defined in Section 7.4(c).

"**Excluded Taxes**": As defined in the definition of "Impositions".

"**Existing Envelope Alterations**": As defined in Section 1.3(c).

"**Expiration Date**": As defined in Section 1.3(a).

"**Extended Landlord Option Exercise ROFO Period**": As defined in Schedule 1.9(g)(ii)(2).

"**Fair Market Rent**": As defined in Section 1.3(c).

"**Fair Market Rent Acceptance Notice**": As defined in Section 1.3(c).

"**Fair Market Rent Dispute**": As defined in Section 1.3(c).

"**Fair Market Rent Dispute Notice**": As defined in Section 1.3(c).

"**Final TO Plans**": As defined in Section 1.6(b)(iv).

"**Financial Covenant Cure Period**": As defined in Section 13.1(h).

"**Financial Officer**": The chief financial officer, principal accounting officer, treasurer, assistant treasurer or controller of Tenant or Tenant' s Parent.

"**Financial Statements**": Individually and/or collectively, as the context may require, (a) all Annual Financial Statements and (b) all Quarterly Financial Statements.

"**First Limited Go Dark Period**": As defined in Section 7.4(c).

"**First Offer Right**": As defined in Schedule 1.9(g)(i).

"**First Offer Right Resolution Period**" As defined in Schedule 1.9(g)(i)(2).

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"**First Substitution Period**": As defined in Section 1.7(a).

"**Fiscal Year**": The fiscal year of Tenant' s Parent for reporting purposes.

"**Fixtures**": As defined in Section 1.1(c).

"**FMV Differential**": As defined in Section 7.3(d).

"**Foreclosure**": Any judicial or non-judicial foreclosure, any exercise of a power of sale or any other enforcement by a Landlord Lender of any Landlord Financing Documents that results in the direct or indirect transfer of title to, or the equity interests in, a Property to a Landlord Lender, its designee or a third party following an event of default under such Landlord Financing Documents.

"**Future Tax**": As defined in the definition of "Impositions".

"**GAAP**": United States generally accepted accounting principles, as in effect from time to time. The term "non-GAAP" shall have the correlative meaning.

"**General Contractor**": As defined in Section 1.6(b)(v).

"**General Marketing Inclusion Right**": As defined in Schedule 1.9(g)(i)(1).

"**General Tax Indemnity**": As defined in Section 4.3.

"**GL Termination Date**": As defined in Section 1.4(a).

"**Go Dark**": With respect to any Demised Premises, to cease operations at or to abandon such Demised Premises other than, in each case, Excluded Cessations. The terms "**Going Dark**", "**Goes Dark**" and "**Gone Dark**" shall have the correlative meanings.

"**Go Dark Event**": As defined in Section 7.4(b).

"**Go Dark-No Substitution Properties**": As defined in the Recitals.

"**Go Dark Property**": As defined in Section 7.4(b).

"**Go Dark/Substitution Properties**": As defined in Section 1.7(b).

"**Go Dark Trigger Cure**": As defined in Section 7.4(h).

"**Go Dark Trigger Event**": As defined in Section 7.4(f).

"**Go Dark Trigger Property**": As defined in Section 7.4(f).

"**Go Dark Trigger Sale**": The sale of any Go Dark Trigger Property to a Counterparty pursuant to any Purchase Option activated or triggered by a Go Dark Trigger Event with respect to such Property.

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"**Governmental Authority**": Any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official or other legislative, judicial, regulatory, administrative, governmental or quasi-governmental authority.

"**Gross Leasable Square Footage**": With respect to any Property as of any date of determination, the gross rentable square footage in the buildings and improvements comprising such Property, determined: (a) in accordance with the prevailing industry standard measurement method for properties substantially similar to the Property customarily used in the applicable jurisdiction in which such Property is located; or (b) if there is no such prevailing industry standard measurement method as of such date, in accordance with the BOMA Measurement Standard. In the event of any Dispute with respect to the calculation of Gross Leasable Square Footage or the appropriate measuring method with respect thereto, such Dispute shall be determined by expedited arbitration pursuant to Section 27.1 upon application by any Party. The terms "**Gross Leasable Square Foot**" and "**Gross Leasable Square Feet**" shall have correlative meanings. In any case where, pursuant to the provisions of this Lease, the Gross Leasable Square Footage of any portion of a Demised Premises or any portion of a Property is to be determined after the date hereof, such Gross Leasable Square Footage shall be calculated and determined in accordance with this definition (and either Party may, with the other Party' s consent, not to be unreasonably withheld, conditioned or delayed, cause the measurement of the applicable Demised Premises or Property in order to determine such Gross Leasable Square Footage).

"**Ground Lease**": As defined in Section 1.4(a).

"**Ground Lease Expiration Date**": As defined in Section 1.4(a).

"**Ground Lease Option**": As defined in Section 1.4(b).

"**Ground Lease Purchase Option**": As defined in Section 1.4(b).

"**Ground Lease Renewal**": As defined in Section 1.4(c).

"**Ground Lease Renewal Option**": As defined in Section 1.4(b).

"**Ground Lease SNDA**": As defined in Section 7.3(a).

"**Ground Leased Property**": As defined in Section 1.4(a).

"**Ground Lessor**": As defined in Section 7.3(a).

"**Guarantor Financial Covenants**": Collectively, the requirement that the Lease Guarantors maintain, on an aggregate basis: (a) at all times during the Term from and after April 30, 2022, a Tangible Net Worth of not less than the Minimum TNW (which Tangible Net Worth shall be measured as of the end of each fiscal quarter commencing with the fiscal quarter ending on April 30, 2022); and (b) at all times during the Term, Liquid Assets of not less than the Minimum Liquidity Amount.

"**Hazardous Substances**": Each and every element, compound, chemical mixture, emission, contaminant, pollutant, material, waste or other substance (including radioactive

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substances, whether solid, liquid or gaseous) which is defined, determined or identified as hazardous or toxic under any Environmental Law or for which liability or standards of care or a requirement for investigation or remediation are imposed under, or that are otherwise subject to, any Environmental Law, including, without limitation, asbestos, asbestos containing materials, urethane, polychlorinated biphenyls, any petroleum product, petroleum derived products and/or its constituents or derivatives, and any caustic, flammable or explosive materials. Without limiting the generality of the foregoing, the term shall mean and include:

(a) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products of a type and in a quantity regularly found at properties with a standard of operation and maintenance comparable to the applicable Property;

(b) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(c) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder;

(d) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder; and

(e) "hazardous materials" as defined under all applicable environmental protection statutes of each state and municipality in which the Demised Premises are located.

"**Highest and Best Use**": As defined in Schedule 7.3(d).

"**Impositions**": All taxes and assessments, including capital stock, franchise, margin and other state taxes, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes, including tax increases and re-assessments; assessments and supplemental assessments and public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not such improvements or benefits are completed or realized during the Term; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Demised Premises or the Properties and all interest and penalties thereon attributable to any failure in payment by Tenant which at any time prior to, during or in respect of (and, in each case, to the extent attributable to a period falling within) the Term hereof may be assessed or imposed on or in respect of or be a lien upon (a) Tenant, Landlord or either Party' s respective interest in the Demised Premises or the Properties, (b) the Demised Premises or any part thereof or any estate, right, title or interest therein, (c) any Rent, (d) any occupancy, leasing, operation, use or possession of, or sales from or activities conducted at, the Demised Premises or the Properties or any part thereof, or (e) any Tenant' s Property; provided, however, that nothing

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contained in this Lease shall be construed to require Tenant to pay (i) any franchise, corporate, estate, inheritance, succession, capital levy or capital stock tax of Landlord, (ii) any income, profit, excess profit, receipts or revenue tax upon the income or receipts of Landlord, (iii) any tax imposed solely because of the nature of the business entity of Landlord, (iv) any transfer, recordation or similar tax incident to a transfer (directly or indirectly) of (A) any Ground Lessor' s fee interest in any Property and a concurrent transfer of such Ground Lessor' s interest as landlord under the Ground Lease with respect to such Property, (B) Landlord' s interest in any Property and a concurrent transfer of Landlord' s interest as landlord under this Lease, or (C) in connection with a Go Dark Trigger Sale, in each case, except to the extent expressly provided herein to the contrary with respect to any such conveyance or transfer of all or any portion of a Property to Tenant in connection with the ROFO Right, Modified ROFO Right or First Offer Right, or (v) any mortgage recording tax imposed on or in connection with the recordation of any Landlord Financing Documents (collectively, "**Excluded Taxes**"); provided, further, that Impositions shall include any tax, assessment, levy or charge set forth in the foregoing clause (i) or (ii) that is levied, assessed or imposed in lieu of, or as a substitute for, any other tax, assessment or charge which, if it were in effect would constitute an "Imposition" which is Tenant' s responsibility under this definition (e.g., any real property tax that is recharacterized as a franchise tax or is a franchise tax or gross receipts tax that is the economic equivalent of a real property tax on all or a portion of Landlord' s gross receipts (as opposed to Landlord' s net income), so long as the foregoing franchise and/or gross receipts taxes are (1) assessed against owners of real property in their capacity as such (as opposed to any such taxes which are of general applicability) and (2) computed as if Landlord owned no real property other than the applicable Properties and no gross receipts other than those deriving from the applicable Properties). In the event that any ad valorem or future real property tax (a "**Future Tax**") is implemented or characterized by applicable Legal Requirements as an income tax upon Landlord and Tenant is thereby prohibited by any Legal Requirement from paying such Future Tax, Landlord and Tenant hereby agreeing that the Base Rent shall be increased by the amount necessary to provide Landlord the same net yield as Landlord would have received but for such implementation or characterization (as applicable) of such Future Tax, assuming for purposes of calculating the amount of such increase that the Base Rent or the Base Rent Allocation Amounts of the applicable Properties to which such Future Tax relates (as the case may be) were the only income of Landlord subject to such Future Tax.

"**Included Foreign Subsidiary**": As defined in the definition of "Lease Guarantor".

"**Indebtedness**": With respect to any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable if such amounts were advanced thereunder, (c) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person is liable, (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss and (g) any other similar amounts.

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"**Indemnified Party**": A Landlord Indemnified Party or Tenant Indemnified Party, as applicable.

"**Indemnifying Party**": As defined in Section 15.1(c).

"**Independent Director**": As defined on Schedule 1.2.

"**Initial Cure Period**": As defined in Section 13.1(n).

"**Initial Environmental Indemnity Agreement**": That certain Environmental Indemnity Agreement, dated as of the Commencement Date, by Initial Lease Guarantors and Tenant in favor of Landlord, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Initial First Offer Right Period**" As defined on Schedule 1.9(g)(i)(1).

"**Initial Lease Guarantors**": Those certain Persons set forth on Schedule 1.1.

"**Initial Lease Guaranty**": That certain Guaranty, dated as of the Commencement Date, by Initial Lease Guarantors in favor of Landlord, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Initial Modified ROFO Acceptance Notice**": As defined in Schedule 1.9(g)(iii).

"**Initial Pledge Agreement**": That certain Pledge and Security Agreement, dated as of the Commencement Date, by Penney Tenant Holdings LLC, a Delaware limited liability company ("**Initial Pledgor**") in favor of Landlord, as the same may be amended, supplemented or replaced from time to time with Landlord' s prior written consent or otherwise in accordance with the terms of this Lease.

"**Initial Pledgor**": As defined in the definition of "Initial Pledge Agreement".

"**Initial Required Deposit**": As defined in Schedule 1.9(g)(i)(2).

"**Initial ROFO Acceptance Deadline**": As defined in Schedule 1.9(g)(ii).

"**Initial Term**": As defined in Section 1.3(a).

"**Insolvency Event**": As defined in Section 13.1(d)(iii).

"**Installment Expense**" or "**Installment Expenses**": As defined in Section 4.4(a).

"**Insurance Costs**": As defined in Section 11.4(b).

"**Insurance Requirements**": The terms and conditions of all insurance policies required to be maintained by Tenant by this Lease, and all requirements of the issuer of any such policy and of any applicable insurance board, association, organization or company in connection with the issuance or maintenance of any such policy.

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"**Intended Lease Treatment**": As defined in Section 20.23.

"**JAMS**": As defined in Section 1.9(c).

"**Land**": As defined in Section 1.1(a).

"**Landlord**": As defined in the Preamble.

"**Landlord Counteroffer**": As defined in Schedule 1.9(g)(iii)(1).

"**Landlord Default Substitution Cancellation Right**": As defined in Section 13.1(o).

"**Landlord Financing**": Any financing provided to Landlord or its Affiliates pursuant to Landlord Financing Documents.

"**Landlord Financing Documents**": As defined in Section 14.1.

"**Landlord Indemnified Matters**": As defined in Section 15.1(b).

"**Landlord Indemnified Parties**": Landlord and each of its successors, assigns and Affiliates, and their respective direct or indirect members, managers, partners, shareholders, officers, directors, agents and representatives.

"**Landlord Lender**": As defined in Section 14.1.

"**Landlord Mortgage**": As defined in Section 14.1.

"**Landlord Mortgagee**": As defined in Section 14.1.

"**Landlord Option**": As defined in Section 1.5(a).

"**Landlord Option Exercise Date**": As defined in Section 1.5(a).

"**Landlord Option Exercise Sale**": As defined in Schedule 1.9(g)(ii).

"**Landlord Option Notice**": As defined in Section 1.5(a).

"**Landlord Option Property**": As defined in the Recitals.

"**Landlord Retained Portion**": As defined in Section 1.6(a).

"**Landlord Tax Returns**": As defined in Section 4.1(b).

"**Landlord TO Failure**": As defined in Section 7.3(h).

"**Landlord' s Insurance Costs**": As defined in Section 11.2.

"**Landlord' s Pre-Existing Environmental Obligations**": As defined in the Environmental Indemnity Agreement.

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"**Landlord' s Share**": As defined in Section 8.3(e).

"**Landlord-Tenant FMV**": As defined in Schedule 7.3(d).

"**Landlord-Tenant FMV Notice**": As defined in Section 7.3(d).

"**Late Charge**": As defined in Section 3.3.

"**Lease**": As defined in the Preamble.

"**Lease Document Amendments**": As defined in Section 1.5(b)(ii)

"**Lease Documents**": Collectively, this Lease, the Side Letter, the Lease Guaranty, the Pledge Agreement and the Environmental Indemnity Agreement, in each case as the same may be amended, supplemented or replaced from time to time in accordance with the respective terms thereof and the terms of this Lease. The Lease Documents shall exclude any Severed Lease, Severed Lease Supplemental Environmental Indemnity Agreement, Severed Lease Supplemental Guaranty and, if applicable, any Severed Lease Supplemental Pledge Agreement.

"**Lease Guarantor**": Individually and/or collectively, as the context may require, (a) Tenant' s Parent, (b)(i) each domestic Subsidiary of Tenant' s Parent and (ii) each Included Foreign Subsidiary, in each case, other than Opco RE SPE and Opco IP SPE (and any current or future subsidiary of Opco RE SPE or Opco IP SPE) (each such Subsidiary described in this clause (b), a "**Required Subsidiary**") and (c) any other Person that enters into a Lease Guaranty for the benefit of Landlord, for so long as such Lease Guaranty remains in effect. For purposes of this definition, the term "**Included Foreign Subsidiary**" means each foreign Subsidiary of Tenant' s Parent (including any such foreign Subsidiary that exists as of the Commencement Date or that is formed thereafter) that, as of the end of any fiscal quarter, has assets (excluding unsecured intercompany receivables incurred in the ordinary course of business and not incurred, for the avoidance of doubt, in connection with a capital transaction) of Fifty Million Dollars ($50,000,000) or more, unless the execution and delivery of the Lease Guaranty (or any joinder thereto) by such foreign Subsidiary alone would result in the payment of taxes by Tenant' s Parent and/or its Affiliates in the aggregate of Five Million Dollars ($5,000,000) or more in the five (5) year period following such execution and delivery (as reasonably determined by Tenant' s Parent and/or its Affiliates, provided that Tenant shall deliver any back-up documentation reasonably requested by Landlord with respect to such determination promptly following such request). Notwithstanding the foregoing, for all purposes under this Lease relating to (A) financial reporting and calculations of Liquid Assets, Opening Balance Sheet TNW, Tangible Net Worth and the Guarantor Financial Covenants (subject to clause (B) below), "Lease Guarantors" may include (without duplication or double-counting) all Subsidiaries of Tenant' s Parent (including Opco RE SPE and Opco IP SPE (and their respective current or future subsidiaries)) and (B) for purposes of determining the Lease Guarantors' compliance with Guarantor Financial Covenants, "Liquid Assets" shall exclude any Liquid Assets held or owned by any Subsidiaries of Tenant' s Parent that are not Lease Guarantors if the distribution or dividend of such Liquid Assets by such Subsidiary to any applicable Lease Guarantors would result in a default or an event of default under any applicable credit facility to which such Subsidiary or any Tenant Party is a party or any other legal obligations then binding on such Subsidiary or Tenant Party (as applicable).

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"**Lease Guaranty**": Individually and/or collectively, as the context may require, (a) the Initial Lease Guaranty and/or (b) any Replacement Guaranty delivered in accordance with the terms of this Lease, as the same may be amended, supplemented or replaced from time to time with Landlord' s prior written consent or otherwise in accordance with the express terms thereof or in accordance with the express terms of this Lease.

"**Lease Provisions**": As defined in Section 20.14.

"**Lease Severance Date**": As defined in Section 1.9(a).

"**Lease Severance Deadline**": As defined in Section 1.9(a).

"**Lease Severance Event of Default**": As defined in Section 13.1(m).

"**Lease Severance Notice**": As defined in Section 1.9(a).

"**Lease Year**": (a) the period commencing on the Commencement Date and ending on the last day of the calendar month in which the first (1st) anniversary of the Commencement Date occurs and (b) each subsequent period of twelve (12) full calendar months during the Term.

"**Leased Improvements**": As defined in Section 1.1(b).

"**Legal Requirements**": All federal, state, county, municipal and other governmental statutes, laws, rules, policies, guidance, codes, orders, regulations, ordinances, permits, licenses, covenants, conditions, restrictions, judgments, decrees and injunctions (including common law and Environmental Laws) affecting, relating to or binding on Tenant, Landlord, any Demised Premises, the Common Areas, Tenant' s Property or the use, possession, occupancy, operation, maintenance, repair, restoration, construction, Alterations or other Work of or with respect to any Demised Premises, Common Areas or Tenant' s Property, whether now or hereafter enacted and in force, including any of the foregoing which may (a) require repairs, modifications or alterations in or to any Demised Premises and/or Tenant' s Property, (b) in any way affect the use and enjoyment thereof, or (c) regulate the transport, handling, use, storage or disposal or require the cleanup or other treatment of any Hazardous Substance. For the avoidance of doubt, if and for so long as Tenant is not in violation of any Legal Requirements (including, without limitation, by reason of applicable provisions with respect to "grandfathering," notice, grace or cure periods, protest, dispute and contests, negotiations of terms and conditions of remedial action, and the like, provided that the foregoing are undertaken and continue to be pursued in accordance with the applicable provisions of this Lease), Tenant shall be deemed to be in compliance with all Legal Requirements (including Environmental Laws), and Tenant' s liability for any performance by Landlord of Tenant' s obligations to so comply (to the extent permitted in this Lease) shall be similarly conditioned or limited thereby.

"**Limited Go Dark Period**": As defined in Section 7.4(c).

"**Limited Reporting Package**": As defined in Section 1.9(d)(F)(4).

"**Liquid Assets**": Any of the following: (a) to the extent not "restricted" under GAAP and owned free of all security interests, liens, pledges, charges or any other encumbrances (in each

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case other than (x) in favor of any Acceptable Credit Facility and (y) "Specified Permitted Encumbrances" (as defined in the ABL Facility as in effect on and as of the date hereof)): (i) cash, (ii) certificates of deposit (with a maturity of two (2) years or less) issued by, or savings accounts with, any Qualified Financial Institution, (iii) monies held in cash reserves and other cash equivalents and (iv) readily marketable direct full faith and credit obligations of the United States of America or obligations unconditionally guaranteed by the full faith and credit of the United States of America, in each case due within one (1) year or less, (b) amounts available (which shall be determined without reference any anti-cash hoarding limitations) to be drawn under any Acceptable Credit Facility so long as (i) no event of default then exists under such Acceptable Credit Facility (except to the extent that the lenders under such Acceptable Credit Facility agree in writing to continue to accept, honor or fund requests for borrowing, drawing and funding under such Acceptable Credit Facility during such event of default) and (ii) no default or other failure to satisfy a borrowing condition then exists (unless and until such default or condition becomes an event of default (in which case, clause (b)(i) shall apply)) as a result of which any lender thereunder ceases or refuses to accept, honor or fund any request for borrowing, drawing or funding under such Acceptable Credit Facility and (c) solely for the period of twelve months following such payment, the amount of any earn out payment paid pursuant to Section 1 of the Earnout Agreement (as defined in the Asset Purchase Agreement); provided, however, that "Liquid Assets" shall not include (A) any asset that constitutes a part of the Demised Premises or (B) any security deposits that Tenant may then be holding pursuant to executed subleases.

"**LO Amendment Costs**": As defined in Section 1.5(b)(ii).

"**LO Capex Plan**": As defined in Section 8.3(b).

"**LO Capex Work**": As defined in Section 8.3(b).

"**LO Termination Date**": As defined in Section 1.5(a).

"**Local Remedies**": As defined in Section 20.5.

"**Longer-Term Cure Default**": As defined in Section 13.1(n).

"**LS Dispute Resolution Period**": As defined in Section 1.9(b).

"**MAI Appraisal**": An appraisal (a) prepared by (i) a Pre-Approved Appraiser or (ii) another appraiser reasonably acceptable to Landlord, (b) that satisfies the requirements of Title XI of the Federal Institution Reform, Recovery and Enforcement Act of 1989 and the regulations promulgated thereunder and (c) otherwise is in form and substance reasonably satisfactory to Landlord and Tenant. If the Parties are unable to agree as to the form and substance of an MAI Appraisal, either Party shall have the right to submit such dispute to expedited arbitration in accordance with the provisions of Section 27.1.

"**Major Casualty**": As defined in Section 12.2.

"**Major Casualty Termination Notice**": As defined in Section 12.2.

"**Major Condemnation**": As defined in Section 12.4(b).

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"**Major Event of Default**": As defined in Section 13.1(o).

"**Management Meeting Rights**": As defined in Section 20.21(a).

"**Master Affiliate Sublease**": As defined in Section 9.2(c).

"**Master Subtenant**": As defined in Section 9.2(c).

"**Material Discretionary LO Capex Work**": As defined in Section 8.3(b).

"**Material LO Capex Work**": As defined in Section 8.3(c).

"**Material Required LO Capex Work**": As defined in Section 8.3(c).

"**Maximum Go Dark Additional Limitation**": As defined in Section 7.4(d).

"**Maximum Go Dark Limitations**": As defined in Section 7.4(d).

"**Maximum Initial Go Dark Limitation**": As defined in Section 7.4(c).

"**Maximum Substitution Limitation**": As defined in Section 1.7(b).

"**Merger**": With respect to any Person, any merger (including, without limitation, any forward or reverse merger), amalgamation or consolidation of such Person with or into any one or more other Persons. The terms "Merges" and "Merged" shall have their respective correlative meanings.

"**Minimum Liquidity Amount**": As of any applicable date of determination, Liquid Assets of not less than an amount equal to the total Base Rent coming due under this Lease during the twelve (12) month period commencing on the day immediately following such date of determination.

"**Minimum TNW**": As of any date of determination, a Tangible Net Worth of not less than fifty percent (50%) of the Opening Balance Sheet TNW.

"**Modified ROFO Acceptance Date**": As defined in Schedule 1.9(g)(iii)(2).

"**Modified ROFO Acceptance Notice**": As defined in Schedule 1.9(g)(iii)(1).

"**Modified ROFO Clearing PSA**": As defined in Schedule 1.9(g)(iii)(3)(cc)(y).

"**Modified ROFO Notice**": As defined in Schedule 1.9(g)(iii).

"**Modified ROFO Price**": As defined in Schedule 1.9(g)(iii).

"**Modified ROFO Right**": As defined in Schedule 1.9(g)(iii).

"**Modified ROFO Right Designation Election**": As defined in the definition of "S/B Properties".

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"**Multi-State Severed Lease**": A Severed Lease where the Severed Properties subject to such Severed Lease are located in ten (10) or more different States.

"**Net Award**": The entire Award payable in connection with a Condemnation, less (a) any sums paid pursuant to a separate claim that Tenant is permitted hereunder to make with respect to such Condemnation and (b) any costs and expenses incurred (directly or indirectly, including through a reimbursement obligation to a Landlord Lender) by Landlord in collecting such Award.

"**Net Proceeds**": The entire proceeds of any insurance required under clauses (a) through (b) of Section 11.1 or Section 11.2 (excluding business interruption insurance proceeds, except to the extent the same are payable in respect of the Rent), less any expenses incurred (directly or indirectly, including through a reimbursement obligation to a Landlord Lender) by Landlord and/or any Tenant Party in collecting such proceeds.

"**New Lease**": As defined in Section 14.2.

"**No-Consent Sublease Basket**": As defined in Section 9.2(a).

"**No-Consent Subleases**": As defined in Section 9.2(a).

"**Non-Landlord Option Exercise Sale**": As defined in Schedule 1.9(g)(ii).

"**Non-Major Event of Default**": As defined in Section 13.1(o).

"**Non-Performing Party**": As defined in Schedule 8.1(b).

"**Non-S/B Landlord Option Properties**": Those certain Properties identified on Exhibit A-2 that are not S/B Properties.

"**Non-S/B REA**": As defined in Section 7.3(c).

"**Non-Structural Alterations**": As defined in Section 8.1(a).

"**Notice**": A written notice given in accordance with Article XIX.

"**OFAC**": As defined in Section 22.1(a).

"**Officer' s Certificate**": A certificate of Tenant or Landlord, as the case may be, signed by an officer, managing member, managing or general partner or another representative of such party who is authorized to so sign the same.

"**Opco Closing Date**": The "OpCo Closing Date" under and as defined in the Asset Purchase Agreement. For the avoidance of doubt, the OpCo Closing Date is the same as the Commencement Date.

"**OpCo Credit Agreement**": That certain Credit and Guaranty Agreement, dated as of the Commencement Date, by and among, inter alia, Tenant' s Parent, certain Subsidiaries thereof, GLAS USA, LLC, as administrative agent and collateral agent for the lenders party thereto from time to time, and such lenders, as the same may be amended, modified and/or refinanced from time to time.

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"**Opco IP SPE**": Penney IP Holdings LLC, a Delaware limited liability company, together with its successors and assigns.

"**Opco Properties**": As of any date of determination, all properties owned, ground leased or otherwise leased (in each case, directly or indirectly) by Opco RE SPE and/or its Subsidiaries.

"**Opco RE SPE**": Penney Property Holdings LLC, a Delaware limited liability company, together with its successors and assigns.

"**Opening Balance Sheet TNW**": The Tangible Net Worth of Lease Guarantors set forth on the opening balance sheet of Tenant' s Parent as of the Commencement Date (a) minus the value of any negative inventory adjustments (i.e., write-downs) and (b) plus the value of any positive inventory adjustments (i.e., write-ups), as the case may be, applied in accordance with GAAP between the Commencement Date and February 1, 2022; provided, however, that a description of and rationale for such inventory adjustments shall be included in the Annual Financial Statements for each applicable period to the extent that any such inventory adjustments result in a net percentage increase or decrease of ten percent (10%) or more of the Tangible Net Worth of Lease Guarantors.

"**Operating Expenses**": All costs and expenses of any kind, nature, and description incurred in connection with the maintenance, operation, care and/or repair of any Demised Premises or Property that are not duplicative of other costs and expenses that Tenant is obligated to pay or reimburse Landlord for in accordance with the terms and provisions of this Lease. Operating Expenses shall expressly exclude the items set forth on Schedule 3.2(a)(ii).

"**Other Collateral**": As defined in Section 14.1.

"**Other Installment Expense Statement**": As defined in Section 4.4(b)(ii).

"**Other Installment Expenses**": As defined in Section 4.4(b)(ii).

"**Outside Date**": As defined in the definition of "S/B Properties".

"**Outstanding Alterations Payables**": As defined in Section 8.1(a).

"**Outstanding Alterations Payables Threshold**": As defined in Section 8.1(a).

"**Partial EOD Termination**": As defined in Section 13.2(a).

"**Partial Property Termination Date**": As defined in Section 1.6(a).

"**Partial TO Termination**": As defined in Section 1.6(a).

"**Party**": Each of Landlord and Tenant.

"**Payment Date**": As defined in Section 3.1(a).

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"**Pending Removal Properties**": As defined in Section 1.3(c).

"**Performing Party**": As defined in Schedule 8.1(b).

"**Permissible Alterations**": Any Alterations that are not Required Removal Alterations.

"**Permitted Encumbrances**": With respect to any Demised Premises, (a)(i) liens imposed by law, such as mechanics' and materialmen' s liens, in each case for sums not yet overdue for a period of more than thirty (30) days after Notice from Landlord to Tenant of such liens (provided that Landlord' s failure to provide Notice to Tenant of any such lien shall not limit any obligation of Tenant to remove the same other than the commencement of the thirty (30) day period within which Tenant is obligated to remove such lien) or which Tenant is contesting (and which Tenant Bonds) in accordance with the terms of this Lease and (ii) other liens arising out of judgments or awards against Tenant, which Tenant is appropriately contesting through an appeal or other proceeding in accordance with the terms of this Lease, provided that any such lien is Bonded or the enforcement thereof is stayed pending such appeal or other proceeding, (b) liens for taxes, assessments or other governmental charges not yet due and payable or which Tenant is contesting (and which Tenant Bonds) in accordance with the terms of this Lease, (c) all Encumbrances, exceptions and other matters set forth in the title policies existing on the Commencement Date or that will be set forth in the title policies obtained by Landlord' s successor-in-interest in connection with such successor' s acquisition of the Properties on the PropCo Closing Date pursuant to the Asset Purchase Agreement (including, for the avoidance of doubt, the rights of parties in possession of any Properties pursuant to written leases existing on the Commencement Date, including the TBA Leases), (d) all Legal Requirements, zoning or other restrictions or matters in effect from time to time pertaining to the use of the Properties, (e) liens or security interests evidenced and/or perfected by Uniform Commercial Code financing statement filings that relate to leases of Tenant' s Property (but not any portion of the Demised Premises) entered into by Tenant in the ordinary course of business, (f) all Property Documents, as the same are in effect as of the Commencement Date or, if applicable, such other date as of which such Demised Premises becomes subject to this Lease, in each case as the same may be amended, modified and/or supplemented from time to time in accordance with (and subject to) the terms and conditions of this Lease and such Property Documents, (g) the liens of any Landlord Financing Documents, (h) any utility easements and other minor non-monetary Encumbrances required by Governmental Authorities and/or utility providers made in the ordinary course of Tenant' s operation of the Demised Premises and (i) any other Encumbrances (i) entered into by Landlord in accordance with (and subject to) the terms of this Lease (to the extent Landlord is not expressly prohibited from entering into the same hereunder), (ii) as to which both Landlord and Tenant consent in their respective reasonable, good faith discretion or (iii) created by the actions or omissions of Tenant, its Affiliates (and their respective successors and assigns) or its subtenants and that were not consented to by Landlord as provided in clause (ii) above.

"**Permitted Go Dark Events**": As defined in Section 7.4(c).

"**Permitted Indebtedness**": As defined on Schedule 1.2.

"**Permitted Licenses**": As defined in Section 9.2(a).

"**Permitted Second Chance Subleases**": As defined in Section 9.2(b).

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"**Permitted Sublease**": As defined in Section 9.2(a).

"**Permitted Sublease Reports**": As defined in Section 9.2(b).

"**Permitted Substitution Period**": As defined in Section 1.7(a).

"**Permitted Use**": As defined in Section 7.2(a).

"**Person**" or "**person**": Any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

"**Pledge Agreement**": Individually and/or collectively, as the context may require, (a) the Initial Pledge Agreement, and (b) any Replacement Pledge Agreement, as the same may be amended, supplemented or replaced from time to time with Landlord' s prior written consent or otherwise in accordance with the respective terms thereof and the terms of this Lease.

"**Pledgor**": Individually and/or collectively, as the context may require, (a) Initial Pledgor and (b) any Replacement Pledgor.

"**Portfolio-Wide**": With respect to any item or matter relevant to this Lease as of any date of determination, the application of such item or matter (as applicable) to all of the Properties subject to this Lease as of such date of determination.

"**Portions**": As defined in Section 1.6(a).

"**Potential Taubman S/B Properties**": As defined in the definition of "S/B Properties".

"**Pre-Agreed PSA Form**": The form purchase and sale agreement to be agreed to between the Parties, each acting reasonably and in good faith, by a date that is not later than thirty (30) days after the Opco Closing Date and on terms that are consistent with the applicable provisions of this Lease.

"**Pre-Agreed Severed Lease Form**": The form of Severed Lease to be agreed to between the Parties, each acting reasonably and in good faith, by a date that is not later than the PropCo Closing Date and on terms that are consistent with the applicable provisions of this Lease.

"**Pre-Approved Access Agreement Form**": As defined in Section 9.7.

"**Pre-Approved Appraiser**": Any of (a) Cushman & Wakefield, (b) Eastdil, (c) Jones Lang LaSalle, (d) CBRE, (e) HFF, Inc., (f) Newmark Knight Frank or (g) any of the respective successors of the foregoing.

"**Pre-Approved Other Use**": Any use expressly identified as a "Pre-Approved Other Use" on Schedule 7.2(a).

"**Preliminary TO Plans**": As defined in Section 1.6(a).

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"**Present Value**": With respect to any amount as of any date of determination, such amount discounted by a rate per annum equal to (a) the Prime Rate as of such date of determination, plus (b) three percent (3%) per annum.

"**Prime Rate**": On any date, a rate equal to the annual rate on such date publicly announced by JPMorgan Chase Bank, N.A. (provided, that if JPMorgan Chase Bank, N.A. ceases to publish such rate, the Prime Rate shall be determined according to the Prime Rate of Citibank, N.A. or, if Citibank, N.A. is not then publishing such rate, another nationally-recognized money center bank selected by Landlord and reasonably approved by Tenant) to be its prime rate for ninety (90)-day unsecured loans to its corporate borrowers of the highest credit standing, but in no event greater than the maximum rate then permitted under applicable Legal Requirements.

"**Pro Rata Portion**": With respect to each Portion of a Tenant Option Property following a Partial Property Termination Date with respect thereto, a fraction (expressed as a percentage), (a) the numerator of which is the Gross Leasable Square Footage of such Portion and (b) the denominator of which is the aggregate Gross Leasable Square Footage of both Portions of such entire Tenant Option Property.

"**Prohibited Persons**": As defined in Section 22.1(a).

"**Prohibited Use**": Any use identified as a "Prohibited Use" on Schedule 7.2(a).

"**PropCo Closing Date**": The "PropCo Closing Date" under and as defined in the Asset Purchase Agreement.

"**Property**" **or** "**Properties**": As defined in the Recitals.

"**Property Charges**": As defined in Section 3.2(a)(vi).

"**Property Document CAM Expenses**": As defined in Section 3.2(a)(iv).

"**Property Documents**": Collectively, all (a) REAs and (b) Ground Leases.

"**Property Requirements**": Collectively, all Insurance Requirements, Legal Requirements and the terms of conditions of all Property Documents.

"**Property Sale**": As defined in Section 17.1.

"**Property Termination**": As defined in Section 1.10.

"**Property Termination Date**": Any date on which this Lease terminates with respect to any (but not the entire) Demised Premises or any applicable portion thereof.

"**PSA Closing Extension Right**": As defined in Schedule 1.9(g)(i)(2).

"**Purchase Option**": As defined in Section 7.3(d).

"**Qualified Financial Institution**": As of any date of determination, any bank or other financial institution organized under the laws of the United States of America or any State that, as

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of such date, (a) has combined capital, surplus and undivided profits of at least $500,000,000 and (b) whose long term debt is rated "A-3" or higher by Moody' s or "A-" or higher by S&P (or a similar equivalent rating by at least one other "nationally recognized statistical rating organization" (as defined in Rule 436 under the Securities Act)).

"**Qualified Replacement Property**": As of any date of determination with respect to any Replaced Property, any replacement real property that (a) Opco RE SPE (or any of its Affiliates) owns (i) in fee simple if the applicable Replacement Property is owned in fee simple or (ii) in fee simple or in a leasehold estate if the applicable Replacement Property is a Ground Leased Property (provided, however, that any such leasehold estate shall be held by such Person pursuant to a long-term ground lease that is acceptable to Landlord in its sole discretion), (b) is a "lit" store operated in accordance with the Permitted Use (and in no event for any Prohibited Use) for not less than six (6) months prior to such date of determination and (c) has substantially similar real estate quality and other characteristics as the applicable Replaced Property (other than the sub-performing characteristics of such Replaced Property).

"**Quarterly Financial Statements**": For any fiscal quarter, consolidated statements of Tenant' s Parent and its Subsidiaries' income, stockholders' equity and cash flows for such period and for the period from the beginning of the then current Fiscal Year to the end of such fiscal quarter and the related consolidated balance sheet as of the end of such period, together with all notes thereto, and together with statements of Consolidated Adjusted EBITDA (which the Parties acknowledge is a non-GAAP measure), in each case in reasonable detail and setting forth in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year. All Quarterly Financial Statements shall be accompanied by a narrative report describing the operations and performance of Tenant' s Parent and its Subsidiaries in the form prepared for presentation to the senior management of Tenant' s Parent for the applicable fiscal quarter and for the period from the beginning of the then current Fiscal Year to the end of such fiscal quarter. For the avoidance of doubt, Quarterly Financial Statements need not be audited.

"**Re-Classified Landlord Option Property**": As defined in Section 7.4(g).

"**REA Action**": As defined in Section 7.3(b)

"**REAs**": All reciprocal easement, operating and/or construction agreements, easements, rights of way, covenants, conditions, restrictions, declarations and similar agreements or encumbrances affecting the access, ingress, egress, use, maintenance, construction, parking, signage, occupancy or operation of any Demised Premises, Property or Common Areas, in each case as the same may be in effect from time to time and whether or not the same may be of record.

"**Reference Base Rent**": The total annual Base Rent (without giving effect to the Year 1 Partial Abatement) payable during the first (1st) Lease Year of the Initial Term (i.e., $121,227,382), as the same may be adjusted (solely for purposes of calculating any Maximum Substitution Limitation) pursuant to the provisions of Section 1.9.

"**Reference Base Rent Allocation Amounts**": With respect to any Properties, the aggregate Base Rent Allocation Amounts in effect under this Lease for such Properties during the first (1st) Lease Year of the Initial Term (without giving effect to the Year 1 Partial Abatement).

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"**Reference Net Worth**": As defined in Section 9.3(a).

"**Reference Property Value**": With respect to each Property, the value assigned to such Property in Schedule 8.1 attached to the Side Letter.

"**Related User**" or "**Related Users**": With respect to any Person, such Person' s tenants, subtenants, licensees, agents, employees, customers, invitees, contractors, vendors, agents and representatives, permitted by such Person to use the premises in question.

"**Renewal Exercise Date**": As defined in Section 1.3(b).

"**Renewal Kick Out Option**": As defined in Section 1.3(b).

"**Renewal Kick Out Property**": As defined in Section 1.3(b).

"**Renewal Notice**": As defined in Section 1.3(b).

"**Renewal Option**": As defined in Section 1.3(b).

"**Renewal Term**": As defined in Section 1.3(b).

"**Renewal Term Commencement Date**": As defined in Section 1.3(d).

"**Rent**": Collectively, the Base Rent and all Additional Rent.

"**Replaced Guarantors**": As defined in Section 3.6.

"**Replaced Property**": As defined in Section 1.7(a).

"**Replacement Documents**": As defined in Section 1.7(c)(viii).

"**Replacement Environmental Indemnity Agreement**": As defined in Section 3.6.

"**Replacement Guarantors**": As defined in Section 3.6.

"**Replacement Guaranty**": As defined in Section 3.6.

"**Replacement Pledge Agreement**": As defined in Section 3.6.

"**Replacement Pledgor**": As defined in Section 3.6.

"**Replacement Property**": As defined in Section 1.7(a).

"**Reporting Package**": As defined in Section 20.21(c).

"**Requesting Party**": As defined in the definition of "Deemed Approval Procedure".

"**Required Capex Plan**": As defined in Section 8.3(a).

"**Required LO Capex Work**": As defined in Section 8.3(c).

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"**Required Removal Alterations**": As defined in Section 8.2.

"**Required Return Condition**": As defined in Section 25.1.

"**Required Subsidiary**": As defined in the definition of "Lease Guarantor".

"**Required Work**": As defined in Section 8.1(d).

"**Responding Party**": As defined in the definition of "Deemed Approval Procedure".

"**Restoration Conditions**": As defined in Section 12.1(a).

"**Restoration Escrow Agent**": As defined in Section 12.1(a).

"**Restoration Escrow Agreement**": As defined in Section 12.1(a).

"**Restoration Substantial Completion Date**": As defined in Section 12.5(a)(iii).

"**Restoration Threshold**": As defined in Section 12.1(a).

"**Retail Operations Claims**": Any and all claims from or by all customers, licensees, invitees, employees and others for personal injury, property damage, product or service warranties, service, merchandise, products liability, and employment, consumer credit and vendor claims and all other claims and liabilities under applicable Legal Requirements, in each case arising out of or relating to any retail business operations or other activities conducted on or about any Demised Premises by Tenant, any Lease Guarantor or any of their respective Affiliates, in each case occurring at any time during the Term with respect to any Demised Premises, including, without limitation, claims from or by all customers, licensees, invitees, employees, Governmental Authorities or any other Persons for, among other things, any non-compliance with applicable Legal Requirements, personal injury, property damage, product or service warranty, service, merchandise, products liability, tax, employment (including any pension-related claims), consumer credit and/or vendor claims. "Retail Operations Claims" shall further include all claims and liabilities arising under tort claims by third parties, violations of applicable Legal Requirements and/or the physical condition or use of any Demised Premises arising at any time during the Term, except to the extent caused by the gross negligence or willful misconduct of Landlord or any Landlord Indemnified Party.

"**ROFO Acceptance Deadline**": As defined in Schedule 1.9(g)(ii).

"**ROFO Acceptance Notice**": As defined in Schedule 1.9(g)(ii).

"**ROFO Clearing PSA**": As defined in Schedule 1.9(g)(ii)(2).

"**ROFO Extension Deposit**": As defined in Schedule 1.9(g)(ii).

"**ROFO Notice**": As defined in Schedule 1.9(g)(ii).

"**ROFO Price**": As defined in Schedule 1.9(g)(ii).

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"**ROFO Right**": As defined in Schedule 1.9(g)(ii).

"**ROFO/Modified ROFO Portfolio Sale**": As defined in Schedule 1.9(g)(vii)(6).

"**Sales Per Square Foot**": With respect to any Property for any period, the ratio of (a) the gross sales revenue of such Property for such period to (b) the Gross Leasable Square Footage of such Property during such period.

"**S&P**": Standard & Poor' s Ratings Services, a Standard & Poor' s Financial Services LLC company, together with its successors.

"**S&P Insurer Minimum Rating**": As defined in Section 11.4(c).

"**S&P Insurer Rating**": As defined in Section 11.4(c).

"**S/B Ground Lease**": As defined in Section 7.3(g).

"**S/B Ground Lease Action**": As defined in Section 7.3(g).

"**S/B Landlord Option Properties**": Those certain Landlord Option Properties identified as "S/B Landlord Option Properties" on Schedule 7.3. Notwithstanding anything to the contrary herein, in no event shall any After-Acquired S/B Property, including, without limitation, any Potential Taubman S/B Property (whether or not Landlord has made a Modified ROFO Right Designation Election with respect to such After-Acquired S/B Property), constitute an S/B Landlord Option Property.

"**S/B Non-Landlord Option Properties**": All S/B Properties other than the S/B Landlord Option Properties. The S/B Non-Landlord Option Properties as of the Commencement Date are identified on Schedule 7.3. The S/B Non-Landlord Option Properties shall be deemed to include (a) the Potential Taubman S/B Properties (if acquired by the Outside Date specified in the definition of S/B Properties below) and (b) subject to the After-Acquired S/B Property Basket and the other applicable terms and conditions of this Lease, any other After-Acquired S/B Property.

"**S/B Properties**":

(a) those certain fifty-four (54) Properties as to which Simon or Brookfield (or their respective Affiliates) is, as of the Commencement Date, the Developer and/or owner of the related Shopping Center, which are identified as "Core S/B Properties" on Schedule 7.3;

(b) only to the extent that Simon or Brookfield (or their respective Affiliates) actually acquires such Properties, those certain three (3) Properties as to which Taubman Centers, Inc. (or its Affiliates) is, as of the Commencement Date, the Developer and/or the owner of the related Shopping Center, which are identified as the "Potential Taubman S/B Properties" on Schedule 7.3 (the "**Potential Taubman S/B Properties**"). If such Potential Taubman S/B Properties are in fact acquired by the Outside Date, then Landlord will be deemed to have made a Modified ROFO Right Designation Election with respect to each such Potential Taubman S/B Property, such that each such Potential Taubman S/B Property shall enjoy the rights specified in clause (c)(iv) below from and after the date of such acquisition. Unless such Potential Taubman S/B Properties are not

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acquired by Simon or Brookfield (or their respective Affiliates) by June 30, 2021 (the "**Outside Date**"), Landlord shall extend to Tenant the rights granted to an S/B Property pursuant to Sections 7.3(b) and (g) of this Lease and the Modified ROFO Right, as if each such Potential Taubman S/B Property was an S/B Property as of the Commencement Date; provided, however, that if (A) Landlord elects to sell a Potential Taubman S/B Property prior to the date that it is acquired by Simon or Brookfield (or their respective Affiliates), (B) the Modified ROFO Right is extended to Tenant in connection with such sale, and (C) whether or not such Modified ROFO Right is exercised by Tenant, such Potential Taubman S/B Property is not acquired by the Outside Date, then the After-Acquired S/B Property Basket shall be reduced by each such Potential Taubman S/B Property not so acquired for which the Modified ROFO Right was so extended; and

(c) subject to the further provisions of this clause (c), up to a maximum of nine (9) additional Properties (together with the Potential Taubman S/B Properties, the "**After-Acquired S/B Properties**") that may be acquired by Simon or Brookfield (or their respective Affiliates) following the Commencement Date that Tenant designates as S/B Properties hereunder upon written Notice of such election to Landlord and for which Landlord shall then extend Modified ROFO Rights hereunder to Tenant (the "**After-Acquired S/B Property Basket**"); provided, however, that:

(i) if one or more of the Potential Taubman S/B Properties is not in fact acquired by Simon or Brookfield (or their respective Affiliates) by the Outside Date, then the After-Acquired S/B Property Basket shall be increased by the number of such Potential Taubman S/B Properties that are not in fact acquired by the Outside Date (i.e., if all three Potential Taubman S/B Properties are not in fact acquired, the total number of After-Acquired S/B Properties in the After-Acquired S/B Property Basket shall be increased to twelve (12));

(ii) upon the acquisition of an After-Acquired S/B Property by Simon or Brookfield (or their respective Affiliates), Tenant shall, within thirty (30) days of such acquisition, provide Landlord with Notice of such acquisition in which event such After-Acquired S/B Property shall constitute an "S/B Property" hereunder for purposes of the provisions of Sections 7.3(b) and (g) and if, and only if, such After-Acquired S/B Property is also a Landlord Option Property (it being agreed that any After-Acquired S/B Property that is not a Landlord Option Property shall upon such acquisition receive (subject to the numerical limitations below) both the rights granted to an S/B Property pursuant to Sections 7.3(b) and (g) of this Lease (the "**S/B REA Rights**") and the Modified ROFO Right), Landlord shall, within thirty (30) days after receipt of Tenant' s Notice of the related acquisition, deliver to Tenant Notice of whether Landlord elects to grant, in addition to such S/B REA Rights, the Modified ROFO Right with respect to such After-Acquired S/B Property that is also a Landlord Option Property pursuant to Schedule 1.9(g) in connection with a proposed sale of such Property (a "**Modified ROFO Right Designation Election**") and then:

(A) if Landlord does not make a Modified ROFO Right Designation Election with respect to an After-Acquired S/B Property that is also a Landlord Option Property, then (1) such After-Acquired S/B Property shall constitute an "S/B Property" under this Lease solely for purposes of the provisions of Sections 7.3(b) and (g), (2) the Modified ROFO Right shall not apply with respect to such After-

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Acquired S/B Property (and, for the avoidance of doubt, in no event shall the ROFO Right or any other term or provision of Schedule 1.9(g) relating to the ROFO Right apply to such After-Acquired S/B Property), and (3) such After-Acquired S/B Property shall not reduce the After-Acquired S/B Property Basket; and

(B) if Landlord does make a Modified ROFO Right Designation Election with respect to such After-Acquired S/B Property that is also a Landlord Option Property, then (1) such After-Acquired S/B Property shall continue to constitute an "S/B Property" under this Lease for purposes of the provisions of Sections 7.3(b) and (g), (2) such After-Acquired S/B Property shall be subject to the Modified ROFO Right pursuant to Schedule 1.9(g) (and, for the avoidance of doubt, in no event shall the ROFO Right or the First Offer Right or any other term or provision of Schedule 1.9(g) relating to the ROFO Right or the First Offer Right apply to such After-Acquired S/B Property), (3) such After-Acquired S/B Property (together with each After-Acquired S/B Property that is not a Landlord Option Property) shall reduce the After-Acquired S/B Property Basket on a property-by-property basis (e.g., when Landlord timely makes the first Modified ROFO Right Designation Election with respect to an After-Acquired S/B Property that is also a Landlord Option Property or when an After-Acquired S/B Property that is not a Landlord Option Property is acquired, the After-Acquired S/B Property Basket shall be reduced from nine (9) to eight (8) (and so on) for each such After-Acquired S/B Property, assuming the initial After-Acquired S/B Property Basket was nine (9)), and (4) subject to clause (iii) below, once the After-Acquired S/B Property Basket has been reduced to zero, no additional Property that may be acquired by Simon or Brookfield or their respective Affiliates shall be an After-Acquired S/B Property or a S/B Property under this Lease (or a Severed Lease) and such additional Property shall not be entitled to either the S/B REA Rights or the Modified ROFO Right; and

(iii) upon the divestiture of a S/B Property by Simon or Brookfield (or their respective Affiliates) after the Commencement Date such that neither Simon nor Brookfield nor any of their respective Affiliates has any remaining equity ownership interest in such S/B Property (an "**After-Divested S/B Property**"), Tenant shall, within thirty (30) days of such divestiture, provide Landlord with Notice of such divestiture in which event: (A) such After-Divested S/B Property shall no longer constitute an "S/B Property" hereunder for purposes of the provisions of Sections 7.3(b) and (g) and shall no longer be subject to the ROFO Right or the Modified ROFO Right, as applicable; (B) if such After-Divested S/B Property is a Landlord Option Property, such After-Divested S/B Property shall remain a Landlord Option Property following such divestiture and (for the avoidance of doubt) shall be subject to the First Offer Right and not the ROFO Right or the Modified ROFO Right; and (C) Tenant shall receive a credit to the After-Acquired S/B Property Basket for each After-Divested S/B Property such that the then available After-Acquired S/B Property Basket shall be increased by one (1) upon each such After-Divested S/B Property being divested.

"**S/B REA**": As defined in Section 7.3(b).

"**SEC**": As defined in Section 20.21(b)(i).

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"**Second Chance Sublease Waiting Period**": As defined in Section 9.2(b).

"**Second Limited Go Dark Period**": As defined in Section 7.4(c).

"**Second Substitution Period**": As defined in Section 1.7(a).

"**Set-Off Rights**": As defined in Section 3.5.

"**Severed Landlord**": As defined in Section 1.9(a).

"**Severed Lease**" or "**Severed Leases**": As defined in Section 1.9(a).

"**Severed Lease Ancillary Documents**": As defined in Section 1.9(d).

"**Severed Lease Form Objection Notice**": As defined in Section 1.9(b).

"**Severed Lease No-Consent Sublease Basket**": As defined in Section 1.9(d)(C).

"**Severed Lease Supplemental Environmental Indemnity Agreement**": As defined in Section 1.9(d).

"**Severed Lease Supplemental Guaranty**": As defined in Section 1.9(d).

"**Severed Lease Supplemental Pledge Agreement**": As defined in Section 1.9(d).

"**Severed Property**" or "**Severed Properties**": As defined in Section 1.9(a).

"**Severed Tenant**": As defined in Section 1.9(a).

"**Shopping Center**": Any shopping center, shopping mall or other property of a third-party property owner located adjacent to any Demised Premises or of which any Demised Premises forms a part.

"**Short-Term Ground Lease**": As defined in Section 1.4(a).

"**Side Letter**": That certain Letter Agreement re: Retail Master Lease – Exhibits and Schedules, dated as of the date hereof, by and between Landlord and Tenant and acknowledged and agreed to by the Lease Guarantors.

"**Simon**": Simon Property Group, Inc., together with its successors.

"**Single Appraiser**": As defined in Section 23.1(a).

"**SNDA**": As defined in Section 14.1.

"**Special Purpose Entity**": As defined on Schedule 1.2.

"**State**": With respect to any Demised Premises, the state or commonwealth in which such Demised Premises is located.

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"**State Specific Provisions**": The state specific provisions to be agreed to between the Parties, each acting reasonably and in good faith, by a date that is not later than the Propco Closing Date and then, once agreed, attached to the Side Letter (and, upon the severance of any Severed Property in such state, added to the applicable Severed Lease), it being agreed by the Parties that if any state specific provision is (a) required to be included in this Lease pursuant to a State' s laws or (b) required to give effect to, or make legally-enforceable, any provision of this Lease (which may include a waiver of a State' s laws that would otherwise apply and be inconsistent with the terms of this Lease), the same shall be included as a State Specific Provision.

"**Store**": As defined in the Recitals.

"**Stratification**": As defined in Section 20.21(c).

"**Structural Alterations**": As defined in Section 8.1(a).

"**Structure Chart**": The organizational structure chart in effect as of the Commencement Date and attached to this Lease as **Exhibit G**, as such chart may be modified by Tenant from time to time in compliance with Article IX.

"**Sub-Performing Property**": As of any date of determination, any Property (a) that is not a Landlord Option Property or a Tenant Option Property and (b) that, as of such date of determination, either (i) has an EBITDAR to Rent Ratio of 1.1:1.0 or less, calculated on a trailing twelve (12) month basis, or (ii) is a Go Dark Trigger Property.

"**Subsidiary**": With respect to any Person as of any date of determination, (a) any corporation more than fifty percent (50%) of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not, as of such date, the stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is, as of such date, owned by such Person and/or one or more Subsidiaries of such Person, and (b) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a fifty percent (50%) equity interest as of such date. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Lease shall refer to a Subsidiary or Subsidiaries of Tenant.

"**Substitution Date**": As defined in Section 1.7(a).

"**Substitution Notice**": As defined in Section 1.7(a).

"**Substitution Option**": As defined in Section 1.7(a).

"**Subtenant SNDA**": As defined in Section 9.5.

"**Successor Landlord**": As defined in Section 14.2.

"**Successor Tenant**": As defined in Section 9.3(c).

"**Surviving Obligations**": As defined in Section 1.7(d).

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"**Tangible Net Worth**": With respect to any Person, the "Total Stockholders' Equity" less the book value of such Person' s indefinite-lived intangible assets, net of accumulated impairment, in each case as calculated in accordance with GAAP and shown on the latest financial statements of such Person.

"**Tax**" or "**Taxes**": As defined in Section 4.3.

"**Tax Statement**": As defined in Section 4.4(b)(i).

"**TBA Leases**": The leases listed on **Schedule 2.1** attached hereto, entered into by Tenant' s Predecessor (or one or more of its Affiliates) and affecting the portions of the Demised Premises more particularly described in such leases, which leases (as the same are now in effect) the Parties acknowledge and agree shall be assigned to Tenant pursuant to the Asset Purchase Agreement (subject to the right of Tenant and its Affiliates to subsequently assume or reject any of such leases pursuant to the terms of the Asset Purchase Agreement and Sale Order (as defined in the Asset Purchase Agreement)).

"**Temporary Condemnation**": A temporary requisition or confiscation of the use or occupancy of all or a portion of any Demised Premises, or the primary means of access thereto, by any Governmental Authority, whether pursuant to an agreement with such Governmental Authority in settlement of or under threat of any such requisition or confiscation or otherwise.

"**Tenant**": As defined in the Preamble.

"**Tenant Common Areas**": As defined in Section 10.1(a).

"**Tenant Confidential Information**": As defined in Section 20.21(e).

"**Tenant Counteroffer**": As defined in Schedule 1.9(g)(iii).

"**Tenant Cure Notice**": As defined in Section 7.3(h).

"**Tenant Indemnified Matters**": As defined in Section 15.1(a).

"**Tenant Indemnified Parties**": Each Tenant Party and each of their respective successors, assigns and Affiliates, and their respective direct or indirect members, managers, partners, shareholders, officers, directors, agents and representatives.

"**Tenant Offer**": As defined in Schedule 1.9(g)(i).

"**Tenant Option**": As defined in Section 1.6(a).

"**Tenant Option Notice**": As defined in Section 1.6(a).

"**Tenant Option Property**": As defined in the Recitals.

"**Tenant Party**": Each of Tenant and each Lease Guarantor.

"**Tenant Retained Portion**": As defined in Section 1.6(a).

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"**Tenant' s Acts**": Collectively, with respect to any matter, any (a) negligence or willful or intentional misconduct of any Tenant Party or any agents, representatives, employees, contractors or vendors of any Tenant Party, or (b) any breach by any Tenant Party of its obligations under any Lease Document to which each is a Party.

"**Tenant' s Default Substitution Cure Right**": As defined in Section 13.1(o).

"**Tenant' s Go Dark Cure Right**": As defined in Section 7.4(h).

"**Tenant' s Go Dark Rights**": As defined in Section 7.4(b).

"**Tenant' s Parent**": Penney Intermediate Holdings LLC, a Delaware limited liability company.

"**Tenant' s Predecessor**": J. C. Penney Corporation, Inc. (formerly known as J. C. Penney Company, Inc.), a Delaware corporation.

"**Tenant' s Property**": With respect to any Demised Premises, all trade fixtures and other assets (other than such Demised Premises itself and any property owned by a third party in connection with such Demised Premises) owned by any Tenant Party and primarily related to or used in connection with the operation of the business conducted on or about such Demised Premises, together with all replacements, modifications, additions, alterations and substitutions thereof or thereto, in each case subject to the terms and conditions of this Lease. Notwithstanding the foregoing, solely for purposes of Section 6.2, "Tenant' s Property" shall exclude Tenant' s inventory.

"**Tenant' s Proportionate Share**": (a) With respect to any Property, as of any date of determination, but only until the Partial Property Termination Date (if any) with respect to any Tenant Option Property, one hundred percent (100%), and (b) as of any date of determination from and after the Partial Property Termination Date with respect to any Tenant Option Property, (i) one hundred percent (100%) as to any Property Charges which are separately and solely assessed or imposed with respect to the Tenant Retained Portion of such Tenant Option Property and (ii) as to any other Property Charges, Tenant' s Pro Rata Portion of such Property Charges.

"**Term**": As defined in Section 1.3(a).

"**Terminated Property**": As defined in Section 1.10.

"**Termination Confirmation**": As defined in Schedule 1.9(g)(i)(3).

"**Third-Party Charges**": Additional Rent payable to a Person other than Landlord.

"**Third-Party Late Charges**": As defined in Section 3.3.

"**Third Party Subleases**": As defined in Section 9.2(a).

"**Title Company**": As defined in Section 1.5(b)(i).

"**Title Obligations**": As defined in Section 1.5(b)(i).

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"**TO Amendment Costs**": As defined in Section 1.6(c)(ii).

"**TO Cost Sharing Agreements**": As defined in Section 1.6(b)(iv).

"**TO Separation Costs**": As defined Section 1.6(b)(v).

"**TO Separation Work**": As defined Section 1.6(b)(iv).

"**TO Termination Date**": As defined in Section 1.6(a).

"**Total EOD Termination**": As defined in Section 13.2(a).

"**Total Termination Date**": As defined in Section 1.6(a).

"**Total TO Termination**": As defined in Section 1.6(a).

"**Transfer**": Any sale, assignment, transfer, mortgage, pledge, hypothecation, granting of any security interest, lease, sublease, sublicense, license, or occupancy arrangement, whether directly or indirectly, voluntarily or involuntarily, or by operation of law, including, without limitation, (a) any Corporate Transaction and (b) any written agreement, or grant of any option or right, to do or effectuate any of the foregoing, whether conditional, provisional or absolute.

"**Transfer Replacement Guarantors**": As defined in Section 9.3(a).

"**Transferee**": With respect to any Corporate Transaction, (a) the Control Transferee, if such Corporate Transaction consists of a Change of Control; (b) the Asset Purchaser, if such Corporate Transaction consists of an Asset Sale; or (c) the surviving entity(ies) resulting from any Merger or Division, if such Corporate Transaction is a Merger or Division.

"**Trust**": The New York common law trust created pursuant to the Trust Agreement.

"**Trust Agreement**": That certain Amended and Restated Pass-Though Trust Agreement of the Trust, to be dated as of the PropCo Closing Date, by and between COPPER BIDCO LLC and GLAS TRUST COMPANY LLC .

"**Trust Certificateholders**": The holders from time to time of those certain Copper Property CTL Pass Through Trust Certificates and such other pass-through certificates issued by the Trust.

"**Trustee**": The trustee of the Trust from time to time. The initial Trustee is GLAS Trust Company LLC, a New York limited liability company, together with its successors.

"**Unsuitable for its Intended Use**": With respect to any Demised Premises, such Demised Premises being, following a Condemnation, of a size or in a state such that Tenant cannot (in its commercially reasonable judgment) (a) restore at least 80% of the Gross Leasable Square Footage of such Demised Premises as nearly as possible to its condition immediately prior to such Condemnation, or (b) continue to operate such Demised Premises on a commercially practicable basis in accordance with the then applicable Permitted Use, in compliance with all applicable Property Requirements and in a manner generally consistent with the manner in which such Demised Premises was operated prior to such Condemnation.

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"**Upgrades**": As defined in Section 1.6(b)(vi).

"**Use**": As defined in Section 15.1(a).

"**Useful Life**": With respect to any capital improvements or capital repairs made to a Property, the useful life for such improvements or repairs as determined in accordance with GAAP.

"**Utility Charges**": As defined in Section 3.2(a)(iii).

"**Work**": As defined in Section 8.1(e).

"**Year 1 Partial Abatement**": As defined in Section 3.1(c).

ARTICLE III
RENT AND OTHER MONETARY OBLIGATIONS

3.1 **Base Rent.**

(a) During the Term, Tenant shall pay to Landlord the Base Rent in lawful money of the United States of America and legal tender for the payment of public and private debts, in the manner provided in Section 3.4. Subject to Section 3.1(b) below, the annual Base Rent for each Lease Year shall be payable in equal one twelfth (1/12th) monthly installments in advance on or prior to the first (1st) Business Day of each calendar month during such Lease Year (each, a "**Payment Date**").

(b) If the Commencement Date shall occur on a date which is other than the first (1st) Business Day of a calendar month, then (i) on the Commencement Date, Tenant shall pay to Landlord an amount equal to the pro rata portion of the monthly Base Rent that is due and payable for the period from the Commencement Date through the end of the calendar month in which the Commencement Date occurs and (ii) the first (1st) Payment Date shall occur on the first (1st) Business Day of the calendar month immediately succeeding the calendar month in which the Commencement Date occurs.

(c) Notwithstanding the foregoing, Tenant shall be entitled to an abatement of fifty percent (50%) of the monthly Base Rent otherwise payable from the Commencement Date through the end of the (1st) Lease Year of the Initial Term (the "**Year 1 Partial Abatement**").

3.2 **Additional Rent**. Tenant shall pay and discharge, as additional rent, the following (collectively, "**Additional Rent**"):

(a) Tenant' s Proportionate Share of all of the following costs, fees, expenses and charges (without duplication):

(i) Impositions;

(ii) Operating Expenses;

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(iii) costs, fees and expenses and charges for electricity, power, gas, oil, water, sanitary and storm sewer, septic system refuse collection, security, and other utilities and services used or consumed in connection with the Demised Premises during the Term (collectively, "**Utility Charges**");

(iv) from and after the Partial Property Termination Date with respect to any Tenant Option Property: costs and expenses (A) incurred by Landlord in performing all maintenance, repairs and replacements of and to the Common Areas with respect to such Tenant Option Property in accordance with Section 10.1 (collectively, "**CAM Expenses**"); and/or (B) otherwise payable in connection with the maintenance, repair and replacement of and to such Common Areas pursuant to the terms of the applicable Property Documents and other applicable Encumbrances that affect such Tenant Option Property (collectively, "**Property Document CAM Expenses**");

(v) Insurance Costs; and

(vi) other costs, fees, charges and other amounts arising or payable under any Property Documents, including, for the avoidance of doubt, all ground rent (together with Impositions, Utility Charges, Operating Expenses, CAM Expenses, Property Document CAM Expenses and Insurance Costs, collectively, "**Property Charges**");

(b) Costs and Expenses incurred (directly or indirectly) by Landlord in connection or associated with any of the following:

(i) the performance by Landlord of any of Tenant' s obligations under this Lease during the existence of a Disabling Event;

(ii) the exercise and/or enforcement by Landlord of any of its rights and remedies under this Lease during the existence of a Disabling Event;

(iii) other than (for the avoidance of doubt) as expressly set forth herein with respect to any Lease Document Amendments, any amendment or supplement to or modification or termination of this Lease requested by Tenant or Lease Guarantors or necessitated by any action of Tenant or Lease Guarantors, including, without limitation, any default by Tenant or any Lease Guarantor under the Lease Documents to which it is a party;

(iv) except to the extent otherwise expressly set forth in this Lease, any exercise by Tenant of any preferential right or option set forth herein, including, without limitation, any Tenant Option, Substitution Option or Tenant' s Default Substitution Cure Right; and/or

(v) any act undertaken by Landlord (or its counsel) at the request of Tenant, any act of Landlord performed on behalf of, and at the request of, Tenant and/or (during the existence of a Disabling Event) any review and monitoring of compliance by Tenant with the terms of this Lease; and

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(c) any other amounts, sums, charges, liabilities and obligations specifically required to be paid by Tenant under this Lease or which Tenant assumes or agrees to pay or may otherwise become liable for in accordance with the terms hereof.

Except with respect to amounts payable by Tenant to Landlord or as Landlord may otherwise direct from time to time, Tenant shall make all payments of Additional Rent directly to the applicable taxing authorities, service providers, vendors or other applicable third parties entitled to such payments; provided, however, that, from and after the Partial Property Termination Date with respect to any Tenant Option Property, subject to the provisions of Section 4.4, Tenant shall pay Tenant' s Proportionate Share of all or certain recurrent Property Charges with respect to such Tenant Option Property as part of Installment Expenses pursuant to Section 4.4 in lieu of directly paying such amounts to any such third parties. Tenant shall pay and discharge all Additional Rent as and when the same becomes due and payable; provided, however, that with respect to any amounts constituting Additional Rent that are billed to Landlord or any third party, but not to Tenant, Tenant shall pay such amounts (x) within five (5) Business Days following Landlord' s demand for such payment or (y) at least three (3) Business Days prior to the date on which such amounts are due to the applicable Person entitled to payment thereof, whichever is later.

3.3 **Late Payment of Rent**. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent (other than Third-Party Charges) shall cause Landlord to incur costs and administrative complications not contemplated hereunder, the exact amount and scope of which is presently anticipated to be extremely difficult to ascertain. Accordingly, if any regular installment of Base Rent (including, for the avoidance of doubt, the pro rata portion of Base Rent due and payable on the Commencement Date) shall not be paid within five (5) days after its due date, Tenant shall pay to Landlord on demand, as Additional Rent, a late charge equal to the lowest of (a) two and one-half percent (2.5%) of the amount of such installment, (b) the amount of any late charge imposed by any applicable Landlord Lender as a result of such failure to pay such installment and (c) the maximum amount permitted by applicable Legal Requirements (such lowest amount, a "**Late Charge**"); provided, however, that there shall be no Late Charge imposed on the full amount of the Base Rent due for the remainder of the Term in the event that, pursuant to its rights under Section 13.2 of this Lease, Landlord exercises its remedy to accelerate such Base Rent. Tenant hereby agrees that any such Late Charge represents a fair and reasonable estimate of the costs and expenses (including economic losses) that Landlord will incur by reason of a late payment by Tenant. The Parties hereby agree that all such Late Charges shall constitute Rent and shall not be construed as creating a borrower/lender or debtor/creditor relationship between Landlord and Tenant. In addition to and not in limitation of the foregoing, if any installment or payment of Rent (other than Third-Party Charges) shall not be paid on or prior to the date the same is due and payable in accordance with this Lease, then the amount unpaid, excluding any Late Charges previously accrued, shall bear interest at the Default Rate from the due date of such installment or payment to the date of Tenant' s payment thereof in full, and Tenant shall pay such interest to Landlord on demand. The payment of such Late Charge or such interest at the Default Rate shall not constitute a waiver of, nor excuse or cure, any default under this Lease, nor prevent Landlord from exercising or enforcing any rights or remedies available to Landlord under this Lease, at law or in equity. Notwithstanding the foregoing, Tenant shall be responsible for the payment of all interest, fines, penalties, late charges and other costs and fees imposed by third parties ("**Third-Party Late Charges**") with respect to payments of Third-Party Charges which are not paid by Tenant when due hereunder; provided, however, that if Landlord shall elect in its discretion to pay (without any

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obligation to do so) any Third-Party Charges which are not paid by Tenant when due hereunder (together with any Third-Party Late Charges), Tenant shall pay Landlord interest at the Default Rate on all amounts so paid by Landlord and which Tenant fails to pay to Landlord within five (5) days after the date of Landlord' s payment thereof. Notwithstanding anything to the contrary herein, Landlord hereby agrees that if any Late Charge or interest at the Default Rate shall not be due and payable by Tenant hereunder and Tenant shall pay the same in error, then Landlord shall promptly refund the same to Tenant.

3.4 **Method of Payment of Rent and Other Sums and Charges**. Base Rent, and Additional Rent to be paid by Tenant to Landlord in accordance with the terms of this Lease and all sums to be paid by Landlord to Tenant shall be paid by either (a) wire transfer of immediately available funds or (b) electronic funds transfer debit transactions through Automated Clearing House Debit ("**ACH**") and shall be initiated by the applicable Party for settlement on or before the applicable Payment Date (or when otherwise due and payable). Base Rent and such Additional Rent payable to Landlord shall be deemed paid on the date that Landlord actually receives funds through wire transfer or ACH and not on the date that Tenant initiates any such payment. On or prior to the Commencement Date, Landlord shall designate an account into which Tenant shall make all payments of Rent (other than, for the avoidance of doubt, Third-Party Charges) under this Lease, which designated account may be changed by Landlord upon not less than ten (10) Business Days' Notice to Tenant. With respect to any Third-Party Charges, Tenant shall, promptly after demand therefor by Landlord, deliver to Landlord evidence of Tenant' s payment thereof (which may be a copy of the transmittal letter or invoice and a check whereby such payment was made).

3.5 **Net Lease**. Landlord and Tenant acknowledge and agree that (a) this Lease is, and is intended to be, what is commonly referred to as a "net, net, net" or "triple net" lease, and (b) the Rent shall be paid absolutely net to Landlord, without notice or demand (except as otherwise expressly set forth herein), and without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense (collectively, "**Set-Off Rights**"), except to the extent otherwise expressly permitted hereunder, so that this Lease shall yield to Landlord the full amount or benefit of the installments of Base Rent and Tenant' s Proportionate Share of all Additional Rent throughout the Term, all as more fully set forth in Article V and subject to any other provisions of this Lease that expressly provide for the adjustment or abatement of Rent. Except as otherwise expressly set forth in this Lease, Tenant assumes full responsibility for the condition, use, operation and maintenance of the Demised Premises, and Landlord shall have no responsibility or liability therefor. If Landlord commences any proceedings for nonpayment of Rent, Tenant shall not interpose any counterclaim or cross claim or similar pleading of any nature or description in such proceedings (nor move or agree to consolidate in such proceedings any claim by Tenant in any other proceedings) unless the failure to interpose such counterclaim, cross claim or similar pleading would result in a waiver thereof. The obligations of Tenant hereunder are separate and independent covenants, and Tenant shall have no Set-Off Rights with respect to such obligations for any claimed or actual default or breach by Landlord or for any other reason whatsoever except to the extent otherwise expressly provided for hereunder. For the avoidance of doubt, Tenant shall not have, and hereby expressly and absolutely waives, relinquishes, and covenants not to assert, accept or take advantage of, any right to deposit or pay with or into any court or other third-party escrow, depository account or tenant account any disputed Rent, or any Rent pending resolution of any other dispute or controversy with Landlord. Tenant' s obligation to pay Rent under this Lease shall not be affected by any collection of rents by any Governmental

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Authority pursuant to a tax lien or otherwise. All Rent payable by Tenant under this Lease shall constitute "rent" for all purposes (including Section 502(b)(6) of the United States Bankruptcy Reform Act of 1998, as amended (the "**Bankruptcy Code**")).

3.6 **Replacement Guarantors**. On the Commencement Date, the Lease Guarantors executed and delivered to Landlord the Initial Lease Guaranty and the Initial Environmental Indemnity Agreement. Notwithstanding anything to the contrary in this Lease, so long as no Disabling Event then exists, Tenant shall have the right from time to time during the Term to replace any Lease Guarantors ("**Replaced Guarantors**") with one or more other Persons that satisfy the following conditions (each, a "**Replacement Guarantor**"): (a) such Persons shall be (i) Affiliates of Tenant or (ii) otherwise constitute permitted Transfer Replacement Guarantors pursuant to Article IX; (b) Landlord shall have received evidence reasonably satisfactory to Landlord that (i) immediately following the effectiveness of such replacement, (A) in the case of any Replacement Guarantors that are Affiliates of Tenant, such Replacement Guarantors (together with any Continuing Guarantors) shall satisfy the Guarantor Financial Covenants and (B) in the case of any Transfer Replacement Guarantors, the Tangible Net Worth of such Transfer Replacement Guarantors and any applicable Continuing Guarantors shall not be less than the Reference Net Worth and (ii) in the case of either of the foregoing subclauses (A) or (B), immediately following the effectiveness of the applicable replacement, such Persons shall (together with any Continuing Guarantors) satisfy the Guarantor Financial Covenants; (c) such Persons shall have executed (in the case of clauses (ii), (iii) and (iv) below) and delivered to Landlord (i) an Officer' s Certificate attaching a copy of the Structure Chart then in effect, which shall include the Replacement Guarantor, (ii) a replacement guaranty (a "**Replacement Guaranty**"), (iii) a replacement environmental indemnity agreement (a "**Replacement Environmental Indemnity Agreement**"), (iv) if any such Persons own all or any portion of Tenant' s Equity Interests, each such Person (a "**Replacement Pledgor**") shall execute and deliver to Landlord a replacement pledge agreement (a "**Replacement Pledge Agreement**"), in each case of the foregoing clauses (ii), (iii) and (iv) above, in the form and substance of the existing Lease Guaranty, Environmental Indemnity Agreement and Pledge Agreement, respectively, together with any revisions thereto as may be reasonably required by Landlord by reason of the applicable Replacement Guarantor' s state of formation or organizational structure, and (v) if any Replacement Guarantor is not an Affiliate of Tenant, a legal opinion from counsel to such Replacement Guarantor opining as to the due formation of such Replacement Guarantor, the authority of such Replacement Guarantor to enter into such replacement documents, and the enforceability of such documents against such Replacement Guarantor, which legal opinion shall be subject in each case to customary assumptions and qualifications reasonably acceptable to Landlord; and (d) Tenant shall have reimbursed Landlord for all Costs and Expenses incurred by Landlord in connection with the foregoing. Landlord hereby agrees that, in the event that any Replacement Guarantors become Lease Guarantors in accordance with this Section 3.6, the applicable Replaced Guarantors shall be released from their respective obligations under the existing Lease Guaranty, the existing Pledge Agreement (to the extent such Replaced Guarantors no longer hold an Equity Interest in Tenant and such Replacement Guarantors deliver a Replacement Pledge Agreement) and the existing Environmental Indemnity Agreement, in each case that accrue from and after the date of such release. Tenant shall cause each Required Subsidiary from time to time to be a Lease Guarantor and to execute a Lease Guaranty or a joinder to any existing Lease Guaranty, as applicable.

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ARTICLE IV
IMPOSITIONS

4.1 Impositions.

(a) Promptly following each payment by Tenant of Impositions in accordance with this Lease, except to the extent (with respect to any Tenant Option Property) that Tenant is making such payments as part of Installment Expenses pursuant to Section 4.4 rather than making such payments directly, Tenant shall furnish to Landlord copies of official receipts or other proof reasonably satisfactory to Landlord evidencing such payment. For the avoidance of doubt, Tenant' s obligation to pay Impositions (whether such payments are made directly to the applicable taxing authorities or, following the Partial Property Termination Date with respect to any Tenant Option Property, as part of Installment Expenses pursuant to Section 4.4) shall be absolutely fixed upon the date such Impositions become a lien upon the Demised Premises or any part thereof during the Term, subject to the proviso in the immediately succeeding sentence and Section 4.2. Tenant shall also be responsible for all Impositions which, on the Commencement Date, are liens upon the Demised Premises or any part thereof; provided, however, that notwithstanding anything to the contrary herein, Landlord shall be responsible for all Impositions attributable to any period occurring prior to the Commencement Date pursuant to Section 4.1(f) below. If any Imposition may, at the option of the taxpayer, lawfully be paid in installments, whether or not interest shall accrue on the unpaid balance of such Imposition, Tenant may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto.

(b) During the Term, Landlord shall prepare and file or cause to be prepared and filed all tax returns and reports as may be required by Legal Requirements with respect to Landlord' s net income, gross receipts, franchise taxes and taxes on its capital stock and any other returns required to be filed by or in the name of Landlord (the "**Landlord Tax Returns**"), and Tenant, Tenant' s Parent and/or Lease Guarantor shall prepare and file all tax returns and reports that are required to be filed pursuant to any Legal Requirements with respect to or relating to the Demised Premises, Tenant' s Property and the respective other assets, properties and business operations of Tenant (other than any such amounts that are described in the exclusions set forth in Section 4.3).

(c) Any refund due from any taxing authority in respect of any Imposition paid by or on behalf of Tenant shall be paid over to and may be retained by Tenant, net of all of Landlord' s Cost and Expenses incurred in connection with assisting Tenant in obtaining such refund (to the extent Tenant requested such assistance).

(d) Each of Landlord and Tenant shall, upon the written request of the other Party, provide such data as may be maintained by the Party to whom such request is made with respect to the Demised Premises as may be necessary to prepare any required tax returns and/or reports. If any portion of any Demised Premises shall be classified as personal property for tax purposes, then Tenant shall file all personal property tax returns in such jurisdictions where the same must legally be filed. Each of Landlord and Tenant shall, to the extent such Party possesses the same, provide to the other Party, promptly following such Party' s written request, such cost and depreciation records necessary for filing tax returns for any property so classified as personal

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property. To the extent that Landlord is legally required to file personal property tax returns, Landlord shall provide to Tenant copies of any assessment notices indicating a value in excess of the reported value in sufficient time for Tenant to file a protest with respect thereto.

(e) Promptly after request by Landlord, Tenant shall (i) notify Landlord of any changes to the amounts, schedules and instructions for payment of any Impositions of which Tenant has obtained knowledge and (ii) send Landlord any applicable bills for Impositions obtained by Tenant from the appropriate taxing authority or entity. Billings for reimbursement by Tenant to Landlord of personal property or real property taxes and any taxes due under the Landlord Tax Returns, if and to the extent Tenant is responsible for such taxes under the terms of this Section 4.1, shall be accompanied by copies of a bill therefor and payments thereof that identify the personal property or real property or other tax obligations of Landlord with respect to which such payments are made. So long as no Disabling Event exists, Landlord will not voluntarily enter into agreements that would reasonably be expected to result in additional Impositions (other than de minimis additional Impositions or unless Landlord agrees to pay all such additional Impositions) without Tenant' s consent.

(f) Impositions imposed or assessed in respect of any tax-fiscal period during which the Term commences or terminates or expires shall be adjusted and prorated between Landlord and Tenant, whether or not such Imposition is imposed or assessed before or after such commencement, termination or expiration (as applicable), and Tenant' s obligation to pay Tenant' s pro rata share thereof in respect of the applicable tax-fiscal period during the Term shall survive such termination or expiration. Promptly after request by Tenant, Landlord shall pay its pro rata share of any Impositions relating to any tax period preceding the Commencement Date or during the tax period in which the Term commences so that Tenant can timely pay all Impositions relating to such periods and discharge any liens related thereto.

4.2 **Permitted Contests**. Upon not less than ten (10) days' prior written Notice to Landlord, at Tenant' s sole cost and expense, Tenant may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Imposition, Legal Requirement, Insurance Requirement, lien, attachment, levy, encumbrance or charge (each, for purposes of this Section 4.2, a "**Contested Violation**"), and upon Tenant' s request, Landlord shall reasonably cooperate with Tenant with respect to such contest at no cost or expense to Landlord; provided, however, that (a) if such proceedings relate to a contest of an unpaid Imposition, lien, attachment, levy, encumbrance or charge pursuant to any Legal Requirements, the commencement and continuation of such proceedings shall suspend the collection or enforcement thereof from or against Landlord and the Demised Premises; (b) neither the Demised Premises, the Rent nor any part or interest in either would be in any danger of being sold, forfeited, attached or lost pending the outcome of such proceedings; (c) if such proceedings relate to a contest of a Legal Requirement, neither Landlord nor Tenant would be in any danger of any criminal or material civil liability for failure to comply therewith pending the outcome of such proceedings; (d) unless (i) the amount subject to such Contested Violation has already been paid in full by Tenant (under protest or otherwise) or (ii) the Guarantor Financial Covenants are then satisfied, Tenant shall provide to Landlord such security (which security shall not be in an amount that exceeds 110% of the amount of such Contested Violation) including, without limitation, a cash escrow or a letter of credit, as may be reasonably required by Landlord to assure that such Contested Violation shall be paid, discharged or otherwise remedied (including any interest or penalties

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thereon) once the applicable contest is resolved and to prevent any sale or forfeiture of the applicable Demised Premises or of the Rent by reason of such nonpayment or noncompliance (as applicable); (e) in the case of an Insurance Requirement, (A) the policies and coverages required under Article XI shall be maintained and (B) such insurance policies shall not be cancelled and the carriers shall not increase the rates thereunder (unless Tenant pays the amount of such increase) or issue any statement indicating that coverage will be denied; (f) Tenant shall keep Landlord reasonably informed as to the status of, and, promptly following Landlord' s request, provide Landlord with copies of all material documents and correspondence relating to, such proceedings; and (g) if such contest shall be finally resolved against Landlord or Tenant, Tenant shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon and, if applicable, promptly comply with the applicable Legal Requirement or Insurance Requirement. Landlord, at Tenant' s expense, shall execute and deliver to Tenant such authorizations and other documents as may reasonably be required in any such contest, and, if reasonably requested by Tenant, Landlord shall join as a party therein and/or fully participate therein in conjunction with Tenant. The provisions of this Section 4.2 shall not be construed to permit Tenant to contest the payment of Base Rent. Without limiting any other provision of this Lease, Tenant shall indemnify, defend, protect and hold Landlord and all Landlord Indemnified Parties and the Demised Premises harmless from and against any and all liabilities, costs, fees, damages, expenses, penalties, fines and charges of any kind (including reasonable attorneys' fees, whether incurred in the enforcement of this indemnity or otherwise) that may be imposed upon Landlord, the Property and/or the Demised Premises in connection with any such contest and any loss resulting therefrom. Notwithstanding anything in this Section 4.2, any contest with respect to (x) any Landlord Option Property following Landlord' s exercise of the Landlord Option (or, if later, following the date that is twenty-four (24) months prior to the applicable LO Termination Date) or (y) any Tenant Option Property following Tenant' s exercise of the Tenant Option (or, if later, following the date that is twenty-four (24) months prior to the applicable TO Termination Date) shall be subject to Landlord' s prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

4.3 **General Tax Indemnity**. Tenant shall indemnify the Landlord Indemnified Parties against any fees or taxes (individually, a "**Tax**" and collectively, "**Taxes**") imposed by the United States or any taxing jurisdiction or authority of or in the United States (or foreign taxing authority, to the extent such foreign jurisdiction imposes such taxes as a result of the location of Tenant or activities of Tenant in such jurisdiction) in connection with the Demised Premises and/or the transactions contemplated herein (except to the extent otherwise expressly provided for herein); provided, however, that the amount of any indemnification payment in respect of Taxes shall be (a) decreased by any cash Tax benefit actually realized by the Landlord Indemnified Parties as a result of such Taxes; and (b) increased by an amount equal to any cash Taxes attributable to the receipt of such indemnification payment by the Landlord Indemnified Parties. This general tax indemnity ("**General Tax Indemnity**") shall exclude any Taxes: (i) except to the extent that the same are expressly included in the definition of "Impositions", which are based on net income or capital gains, or franchise or doing business taxes of a Landlord Indemnified Party imposed by a jurisdiction in which such Landlord Indemnified Party is otherwise resident for tax purposes or is subject to taxation as a result of any Property being located in such jurisdiction (but only to the extent of the portion of rent or gains attributable to any such Property); (ii) on capital or net worth (including minimum and alternative minimum Taxes measured by any items of Tax preference); (iii) to the extent such Taxes would not have been imposed if the Landlord Indemnified Party or any of its Affiliates had not engaged in activities or had a presence in the jurisdiction imposing such

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Taxes, in each case, that are unrelated to the transaction contemplated hereby; (iv) directly imposed with respect to a voluntary or involuntary transfer (directly or indirectly) by a Landlord Indemnified Party of an interest in all or any portion of any Demised Premises, a Landlord Indemnified Party or any other interest created under the Lease Documents, other than pursuant to and required by Tenant' s exercise of any Tenant Option under this Lease; (v) imposed because the Landlord Indemnified Party is not a U.S. person; (vi) with respect to any period before the Commencement Date or after the termination of this Lease, whether in whole or with respect to a particular Property following the Property Termination Date with respect thereto; and (vii) that otherwise constitute Excluded Taxes. The foregoing exclusions shall not apply to any sales, use, transfer, recording and similar Taxes related to or arising out of Tenant' s Property or any Alterations which Tenant elects or is required to remove in accordance with the terms hereof or any termination of this Lease pursuant to or as a result of any Tenant Option. The General Tax Indemnity shall be subject to Tenant' s right to contest Taxes in the manner provided in Section 4.2. In the event of a claim under the General Tax Indemnity, Landlord shall send Tenant Notice thereof, together with Landlord' s calculation of any amount for which the Landlord Indemnified Parties are seeking indemnification pursuant to this Section 4.3 and accompanied by reasonable supporting documentation. Unless Tenant disputes such calculation (which dispute shall be resolved pursuant to expedited arbitration, as provided in Section 27.1), Tenant shall pay Landlord the amount set forth in Landlord' s Notice within thirty (30) days of its receipt thereof. Tenant shall be entitled to all future refunds of, and Tax savings of Landlord (but not any of its direct or indirect beneficial owners) resulting from or attributable to, any event giving rise to the payment of any indemnification payment under this Section 4.3.

4.4 **Installment Expenses for Tenant Option Properties**.

(a) Subject to the further provisions of this Section 4.4, from and after the Partial Property Termination Date with respect to any Tenant Option Property, Tenant shall deposit with Landlord, on each Payment Date, an amount equal to one-twelfth (1/12th) of the amount reasonably estimated by Landlord (and without duplication) to be Tenant' s Proportionate Share of the sum of the Impositions, Operating Expenses, CAM Expenses, Property Document CAM Expenses, Landlord' s Insurance Costs and all other recurrent Property Charges, but excluding Third-Party Charges, coming due within the applicable calendar year with respect to such Tenant Option Property (each an "**Installment Expense**", and collectively, "**Installment Expenses**"). Provided that no Disabling Event then exists, Landlord shall apply all amounts so deposited by Tenant to the payment of the applicable Installment Expenses as the same shall become due and payable and (for the avoidance of doubt) before the imposition of any fine, penalty, premium, interest or cost thereon.

(b) The following provisions shall apply to any such deposits of Installment Expenses payable by Tenant in accordance with this Section 4.4:

(i) Tenant shall pay to Landlord Tenant' s Proportionate Share of the annual Impositions with respect to the applicable Tenant Option Property in equal monthly installments in an amount based on one hundred five percent (105%) of the prior calendar year' s tax bill for the entire Tenant Option Property, or Landlord may elect, at its sole option, to bill such amounts in arrears. Within seventy-five (75) days after the end of each calendar year during which Tenant made deposits under this Section 4.4, Landlord shall

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furnish Tenant with a written statement of the actual amount of Tenant' s Proportionate Share of the Impositions with respect to such Tenant Option Property (a "**Tax Statement**") and a copy of any and all tax bills and statements received from the taxing authority which serve as a basis for the determination of such Impositions and Tenant' s Proportionate Share thereof. In the event no tax bill is available, Landlord shall reasonably compute the amount of such tax and provide a copy of the tax bill when the same becomes available. If the total amount paid by Tenant under this Section 4.4(b)(i) for any calendar year during the Term with respect to any Tenant Option Property shall be less than the actual amount due from Tenant with respect to such Tenant Option Property for such calendar year, as shown on the applicable Tax Statement, then Tenant shall pay to Landlord the difference between such amount paid by Tenant and such actual amount due within forty-five (45) days after Landlord' s delivery of such Tax Statement; and if the total amount paid by Tenant hereunder with respect to any Tenant Option Property for any calendar year shall exceed the actual amount due from Tenant hereunder for such calendar year, then such excess shall be credited against the next installment(s) of Base Rent, Impositions and assessments due from Tenant to Landlord hereunder with respect to such Property; provided, however, that if the Term shall have expired or this Lease shall have otherwise terminated with respect to such Tenant Option Property (other than in connection with an EOD Termination) and no further Rent shall be due hereunder with respect to such Tenant Option Property, then Landlord shall refund such difference to Tenant when Landlord sends the applicable Tax Statement.

(ii) Landlord shall reasonably estimate by Notice to Tenant, given not less than thirty (30) days in advance of the date that Landlord desires that Tenant commence making such deposits, the amounts Tenant owes for Tenant' s Proportionate Share of Installment Expenses (other than Impositions) with respect to the applicable Tenant Option Property ("**Other Installment Expenses**") for the then current full or partial calendar year of the Term, which Notice shall include supporting calculations and documentation therefor. From and after the date specified in such Notice (which shall be a Payment Date and shall be at least thirty (30) days after the date that such Notice is delivered to Tenant), Tenant shall pay such estimated amount in equal monthly installments over the remainder of the applicable calendar year on or before each applicable Payment Date. Within ninety (90) days after the end of each calendar year for which Tenant made deposits under this Section 4.4, Landlord shall furnish Tenant with a written statement (an "**Other Installment Expense Statement**") showing: (A) the actual amount, based on the information then available to Landlord, of Other Installment Expenses with respect to such Tenant Option Property by category of Other Installment Expense (i.e., Operating Expenses, CAM Expenses, etc.) for the preceding calendar year (or the applicable portion thereof), (B) the amounts actually paid by Tenant towards Other Installment Expenses for such Tenant Option Property with respect to such preceding calendar year (or the applicable portion thereof), and (C) any revised estimate of Tenant' s obligations for Other Installment Expenses for such Tenant Option Property for the then current calendar year, together with supporting calculations and documentation therefor. If any Other Installment Expense Statement shows that Tenant' s estimated payments of Other Installment Expenses with respect to such Tenant Option Property were less than Tenant' s actual obligations for such Other Installment Expenses for the preceding calendar year (or the applicable portion thereof), then Tenant shall pay the difference to Landlord within forty-five (45) days after

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Landlord' s delivery of such Other Installment Expense Statement. If any Other Installment Expense Statement shows an increase in Tenant' s estimated payments of Other Installment Expenses with respect to such Tenant Option Property for the then current calendar year, then Tenant shall make such increased estimated payments commencing on the next occurring Payment Date and, within forty-five (45) days following Tenant' s receipt of such Other Installment Expense Statement, pay the difference between the new and former estimates thereof for the period from January 1 of such calendar year through the end of the calendar month in which Landlord delivers the Other Installment Expense Statement. If the Other Installment Expense Statement shows that Tenant' s estimated payments of Other Installment Expenses with respect to the applicable Tenant Option Property exceeded Tenant' s actual obligations for such Other Installment Expenses, then Tenant shall receive a credit for the difference against payments of Other Installment Expenses (and, if such difference exceeds the amount thereof, the Base Rent) next coming due for such Tenant Option Property; provided, however, that if the Term shall have expired or this Lease shall have otherwise terminated with respect to such Tenant Option Property and no further Rent shall be due with respect thereto, then Landlord shall refund such difference to Tenant when Landlord sends the applicable Other Installment Expense Statement.

(iii) At Tenant' s option, upon ten (10) days' Notice to Landlord and during normal business hours (but not more than once in any Lease Year), Tenant may cause a reasonable review and audit to be made of Landlord' s invoices, bills and documentation justifying any Installment Expenses and Tenant' s Proportionate Share thereof. Tenant hereby agrees that no auditor shall be employed or engaged by Tenant for purposes of the foregoing on a contingency fee basis for the purpose of conducting any such audit. Any overpayment by Tenant revealed by such audit shall promptly be refunded by Landlord. In addition, if such an audit discloses that Tenant has been charged three percent (3%) or more in excess of the amount actually owed by Tenant, Landlord shall be responsible for and reimburse Tenant for the Costs and Expenses of the audit within thirty (30) days of Tenant' s demand for the same with all supporting documentation.

(iv) Notwithstanding anything to the contrary herein, if Landlord shall terminate this Lease as to any Tenant Option Property by reason of a Non-Major Event of Default with respect to such Tenant Option Property, then all deposits made by Tenant on account of Installment Expenses then held by Landlord for such Tenant Option Property shall be applied by Landlord on account of any and all sums due under this Lease with respect to such Tenant Option Property, but otherwise in such order and priority as Landlord shall elect in its sole and absolute discretion.

(v) Any deposit made by Tenant in accordance with this Section 4.4 shall (without limiting Tenant' s obligations under clauses (b)(i)-(ii) hereof) satisfy Tenant' s obligation hereunder to pay any such amount directly to the applicable third parties entitled to such payments.

(c) Notwithstanding the foregoing provisions of this Section 4.4, from and after the Partial Property Termination Date with respect to any Tenant Option Property, Tenant shall pay for all Utility Charges with respect to the Tenant Retained Portion of such Tenant Option Property pursuant to a separate meter to be installed as a part of the TO Separation Work; provided,

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however, that until the installation of such separate meter is complete, Tenant shall pay such Utility Charges (relating to Tenant' s use of utilities located in such Tenant Option Property as they relate to the Tenant Retained Portion) pursuant to the Parties' agreement in respect thereof, which agreement shall be made or entered into as a part of the process set forth in Section 1.6(b).

(d) The provisions of this Section 4.4 shall survive the expiration or earlier termination of this Lease.

ARTICLE V
NO ABATEMENT

5.1 **No Termination, Abatement, Etc.** Except as otherwise expressly provided in this Lease to the contrary, Tenant shall remain bound by this Lease in accordance with each term and provision hereof, and shall, except to the extent otherwise expressly provided herein, neither take any action without the written consent of Landlord to modify, surrender or terminate the same, nor seek or be entitled to any Set-Off Rights, or to deposit in trust or escrow or enjoin the payment of, or otherwise obtain equitable relief with respect to, the Rent or any other liabilities or obligations of Tenant hereunder. Without limiting the foregoing, except as may be otherwise expressly provided to the contrary in this Lease, the obligations of Tenant shall not be affected by reason of: (a) any Casualty or Condemnation with respect to all or any portion of any Demised Premises; (b) the lawful or unlawful prohibition of, or restriction upon, Tenant' s use of the Demised Premises or any portion thereof, or the interference with such use by any Person; (c) any claim that Tenant has or might have against Landlord by reason of any default or breach of any warranty, representation or covenant of or by Landlord under this Lease or any other Lease Documents to which Landlord is a party, at law, in equity or otherwise; (d) any Insolvency Event with respect to any Tenant Party or any Affiliate of a Tenant Party; or (e) for any other cause, whether similar or dissimilar to any of the foregoing, other than a discharge of Tenant from any such obligations pursuant to applicable Legal Requirements (and Tenant hereby waives and relinquishes any such right of discharge to the greatest extent now or hereafter permitted by applicable Legal Requirements). Tenant hereby specifically and unconditionally further waives all rights arising from any occurrence whatsoever that may now or hereafter be conferred upon it by law or in equity (i) to modify, surrender or terminate this Lease in whole or in part or quit or surrender the Demised Premises or any portion thereof (except with respect to any Terminated Property), or (ii) that may entitle Tenant to any abatement, reduction, suspension, deferment, stay or enjoining of the payment of the Rent or other sums payable by Tenant hereunder, except in each case as may be otherwise expressly provided to the contrary in this Lease.

5.2 **Assumption of Risk of Loss**. Without limiting any other provision of this Lease, except in each case to the extent expressly provided in this Lease to the contrary, the entire risk of loss or of decrease in the value, utility or fitness for use, or enjoyment and beneficial use of the Demised Premises as a consequence of (a) any Casualty, thefts, riots or civil unrest, wars, terrorism, pandemic or other events of force majeure, (b) changes in applicable Legal Requirements or financial or economic circumstances or conditions, in each case either generally applicable or specifically applicable to Tenant, any Demised Premises and/or Tenant' s use of all or any portion of any Demised Premises, (c) foreclosures, attachments, levies or executions, or (d) Condemnations, in each case whether foreseen or unforeseen, is hereby unconditionally assumed by Tenant, and in no event shall any of the foregoing entitle Tenant to any Set-Off Right or any right to modify, amend, suspend or terminate this Lease.

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ARTICLE VI
OWNERSHIP OF DEMISED PREMISES

6.1 **Ownership of the Demised Premises**.

(a) Each of Landlord and Tenant hereby acknowledges and agrees that it has executed and delivered this Lease with the understanding that (i) the Demised Premises is the property of Landlord as and to the extent conveyed to Landlord; (ii) Tenant has only the right to the possession and use of the Demised Premises upon the terms and conditions of this Lease; (iii) this Lease is a "true lease," is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, deed to secure debt, trust agreement, security agreement or other financing or trust arrangement, or any other agreement or arrangement other than a "true lease," and the economic realities of this Lease are those of a "true lease"; (iv) the business relationship between Landlord and Tenant created by this Lease and the other Lease Documents to which each is a party is, and at all times shall remain, that of a landlord and a tenant and shall not create or constitute a relationship of a borrower and a lender; (v) this Lease has been entered into by each Party in reliance upon the mutual covenants, conditions and agreements contained herein; and (vi) none of the covenants, conditions or agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership between Landlord and Tenant, to make them joint venture partners, to make Tenant an agent, legal representative, partner, subsidiary or employee of Landlord, or to make Landlord in any way responsible for any debts, obligations or losses of Tenant.

(b) Each of the Parties covenants and agrees not to: (i) file any income tax return or other associated documents; (ii) file any other document with or submit any document to any Governmental Authority; (iii) enter into any written contractual arrangement with any Person; or (iv) release any financial statements, in each case, that takes a position that (A) in general, asserts or could reasonably be construed to assert that this Lease is other than a "true lease" as well as an "operating lease" under GAAP, with Landlord as owner of the Demised Premises and Tenant as the tenant of the Demised Premises or (B) in particular, without limiting the generality of the foregoing, is inconsistent with any of the following: (1) the treatment of Landlord as the owner of the Demised Premises eligible to claim depreciation deductions under Section 167 or 168 of the Code with respect to the Demised Premises, (2) the reporting by Tenant of all Rent payments as rent expenses under Section 162 of the Code, and/or (3) the reporting by Landlord of the Rent payments (including, to the extent permissible under applicable Legal Requirements, any Third-Party Charges that may represent expenses of Landlord) as rental income under Section 61 of the Code, in each case, except to the extent required by applicable Legal Requirements or applicable accounting standards.

(c) Tenant hereby waives any claim or defense under or with respect to this Lease with respect to or against any of the Demised Premises or any Landlord Indemnified Parties based upon the characterization of this Lease as anything other than a true lease and as a master lease of all of the Demised Premises. Tenant hereby (i) stipulates as to, and covenants and agrees not to challenge or support or consent to the challenge of, the validity, enforceability or

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characterization of this Lease of the Demised Premises as a true lease and/or as a single, unitary, indivisible, non-severable instrument pertaining to the lease of all, but not less than all, of the Demised Premises, and (ii) stipulates as to, and covenants and agrees not to assert, take, omit to take, support or consent to any action inconsistent with, the agreements and understandings set forth in Section 1.2 or this Section 6.1.

6.2 **Tenant' s Property**. Subject to the provisions of Section 7.4 and Article XII, Tenant shall, during the Term, own (or lease, subject to the terms of this Lease) and maintain (or cause its Subsidiaries to own (or lease, subject to the terms of this Lease)) in connection with each Demised Premises adequate and sufficient Tenant' s Property, and shall maintain (or cause to be maintained) all such Tenant' s Property in good order, condition and repair, in each case as Tenant reasonably deems necessary and appropriate in the good faith exercise of Tenant' s reasonable commercial judgment to operate such Demised Premises in accordance with the Permitted Use and otherwise in compliance with all applicable Property Requirements and the terms and conditions of this Lease. If any of Tenant' s Property requires replacement to comply with the foregoing, Tenant shall promptly replace (or cause to be replaced) such Tenant' s Property with property of substantially the same or better quality or of comparable utility at Tenant' s sole cost and expense. Subject to the foregoing, including such replacement obligations, Tenant may sell, transfer, convey or otherwise dispose of Tenant' s Property in the ordinary course of Tenant' s business so long as the same does not make or result in any Encumbrances on the Demised Premises or result in an Event of Default, including any failure of Lease Guarantors to satisfy the Guarantor Financial Covenants. Tenant shall remove all of Tenant' s Property from each Demised Premises upon the Expiration Date or any earlier Property Termination Date with respect to such Demised Premises (including all telecommunications cabling and any rooftop antennas or communications installations), except as may be otherwise agreed by Landlord in its sole discretion and except to the extent that Tenant or any Affiliate of Tenant is acquiring such Demised Premises on or about such Expiration Date or Property Termination Date (as applicable) or has transferred ownership of such Tenant' s Property to a Successor Tenant, Landlord or Successor Landlord in accordance with the terms of this Lease. Tenant shall repair and restore all damage caused by such removal in compliance with terms of this Lease. Without limiting the foregoing or any other rights or remedies of Landlord, except as otherwise expressly provided in this Section 6.2, any Tenant' s Property that Tenant fails to so remove from the Demised Premises at the end of the Term shall be deemed abandoned by Tenant and shall become the property of Landlord or the applicable Successor Landlord. For the avoidance of doubt, Tenant' s Property shall not constitute Alterations or Leased Improvements.

ARTICLE VII
CONDITION AND USE OF DEMISED PREMISES; PROPERTY DOCUMENTS

7.1 **Condition of the Demised Premises**. Tenant hereby acknowledges receipt and delivery of complete and exclusive possession of the Demised Premises, and complete delivery of the Common Areas with respect thereto, subject in each case to the Permitted Encumbrances and the terms of this Lease. Tenant hereby acknowledges and confirms that for a substantial period prior to and up to and including the Commencement Date, Tenant' s Predecessor and/or its Subsidiaries were in continuous ownership and possession of the Demised Premises, and Tenant is accordingly fully familiar therewith and has examined and otherwise has knowledge of the condition of the Demised Premises prior to the execution and delivery of this Lease and has found the same to be in good order, condition and repair (to Tenant' s knowledge) and otherwise

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satisfactory to Tenant for the Permitted Use. Regardless, however, of any knowledge, examination or inspection made by or on behalf of Tenant and/or any of its Affiliates, and whether or not any patent or latent defect or condition may have been revealed or discovered thereby, Tenant hereby acknowledges and agrees that Tenant leases the Demised Premises from Landlord "as is," "where is" and "with all faults" in its present condition as of the Commencement Date or, with respect to any Replacement Property, as of the applicable Substitution Date. Except with respect to Landlord' s Pre-Existing Environmental Obligations, Tenant hereby irrevocably, unconditionally and absolutely waives and relinquishes any claim or action against Landlord whatsoever in respect of the condition of the Demised Premises, including any patent or latent defects or adverse conditions not discovered or discoverable or otherwise known or unknown by Tenant as of the Commencement Date.

LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN FACT OR IN LAW, IN RESPECT OF THE DEMISED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, KNOWN AND UNKNOWN, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND COMPLIANCE WITH ALL ENVIRONMENTAL LAWS AT ALL TIMES DURING THE TERM, IT BEING ACKNOWLEDGED AND AGREED BY LANDLORD, HOWEVER, THAT LANDLORD SHALL HAVE SOLE RESPONSIBILITY AND LIABILITY FOR THE LANDLORD' S PRE-EXISTING ENVIRONMENTAL OBLIGATIONS RELATING TO PERIODS OF TIME PRIOR TO THE COMMENCEMENT OF THE TERM.

Tenant' s Initials: /s/ DW Landlord' s Initials: /s/ BW /s/ BW /s/ DW

Without limiting the foregoing, except for Landlord' s Pre-Existing Environmental Obligations with respect to any of the Properties as to which Tenant does not waive or release any claims, Tenant realizes and hereby acknowledges that factual matters now unknown to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses that are presently unknown, unanticipated and unsuspected, and Tenant further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit Landlord and all other Landlord Indemnified Parties from any and all such unknown losses, damages, liabilities, costs and expenses. In furtherance of such intention, Tenant hereby expressly waives, with respect to all Properties located within or outside of the State of California, any and all rights and benefits conferred upon it by the provisions of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

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Tenant acknowledges that all of the foregoing acknowledgments, releases and waivers, including the waiver of the provisions of California Civil Code Section 1542, were expressly bargained for with the advice of counsel.

Tenant' s Initials: /s/ DW Landlord' s Initials: /s/ BW /s/ BW /s/ DW

7.2 **Use of the Demised Premises; Compliance with Laws**.

(a) During the Term, each Property (and the portion of the Demised Premises located therein) shall be used solely for (i) the operation of a retail department store of the same or better quality as the Store at such Property as of the Commencement Date, (ii) upon not less than thirty (30) days' Notice to Landlord, for any Pre-Approved Other Use and/or (iii) upon not less than sixty (60) days' Notice to Landlord, for any other use that may be proposed by Tenant and approved by Landlord in Landlord' s sole and absolute discretion (each such permitted use, individually, and all such permitted uses, collectively, as the context may require, the "**Permitted Use**"), but in no event for any Prohibited Use and subject, in each case, to all applicable Property Requirements, and for no other purpose without the prior written consent of Landlord, which may be granted or withheld in Landlord' s sole and absolute discretion. Subject to the provisions of Sections 7.3 and 7.4, Tenant hereby acknowledges and agrees that the foregoing covenants and restrictions with respect to Tenant' s use of the Demised Premises are a material inducement to Landlord entering into this Lease and that Landlord would not enter into this Lease without such inducement. Tenant shall not use or occupy or permit the Demised Premises to be used or occupied, nor do or permit anything to be done in or on any Demised Premises, in a manner which would reasonably be expected to (A) violate any applicable Property Requirement in any material respect, (B) make void or voidable or cause any insurer to cancel any insurance required to be maintained by Tenant or Landlord under Article XI, (C) make void or voidable, cancel or cause to be cancelled, or release any material warranties, guaranties or permits with respect to such Demised Premises of which Tenant is notified, (D) cause structural injury to any of the Leased Improvements with respect to such Demised Premises, (E) diminish in any material respect the market value of such Demised Premises, (F) constitute a public or private nuisance, (G) without further action or the passage of time, make possible a claim of adverse use or possession or an implied dedication with respect to such Demised Premises, or otherwise impair in any material respect Landlord' s title thereto, or (H) subject the Demised Premises or this Lease to any Encumbrance other than Permitted Encumbrances (including, without limitation, any subleases and Permitted Licenses entered into in accordance with this Lease). Tenant shall, at its expense, (1) comply in all material respects, (2) use commercially reasonably efforts to cause any other Person occupying part of any Demised Premises to comply in all material respects and (3) cause each Demised Premises to comply in all material respects, in each case, with all applicable Property Requirements.

(b) From and after the Partial Property Termination Date with respect to any Tenant Option Property, each of Tenant' s and Landlord' s use and occupancy of its respective Portion of such Tenant Option Property shall be subject to the terms of any applicable Property Documents and the terms of any agreement that may be made or entered into as a part of the process set forth in Section 1.6(b).

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7.3 **Property Documents**.

(a) Tenant shall, at Tenant' s expense, at all times promptly and faithfully abide by, discharge and perform in all material respects, all of the covenants, conditions and agreements contained in all Property Documents on the part of Landlord or Tenant to be kept and performed thereunder (regardless of whether Landlord or Tenant is the party to such Property Documents). Each Party shall promptly deliver to the other Party any notices of default, notices of termination or other material notices received by such Party under any Property Document from (i) if such Property Document is a Ground Lease, the applicable ground lessor (each, a "**Ground Lessor**") and (ii) if such Property Document is an REA, the applicable owner, developer, operator or other counterparty thereto or thereunder (each, a "**Developer**" and, together with any Ground Lessor, each, a "**Counterparty**"), including, for the avoidance of doubt, any notices that relate to any actual or threatened defaults or enforcement actions of or against Tenant or Landlord under or in connection with such Property Documents. Tenant shall reasonably cooperate with Landlord, and (so long as no Disabling Event exists) Landlord shall reasonably cooperate with Tenant, as may be necessary in connection with Landlord' s or Tenant' s (as applicable) compliance with its respective obligations under any Property Documents, which cooperation shall (in the case of Tenant) include Tenant' s delivery, at its sole cost and expense, of any required financial reporting to (and/or, subject to the terms of this Section 7.3, obtaining necessary consents or approvals from) the applicable Counterparties. At Tenant' s request, and provided that no Disabling Event then exists, (A) Landlord shall use commercially reasonable efforts to obtain (and shall reasonably cooperate with Tenant in obtaining), at Tenant' s sole cost and expense, a subordination, non-disturbance and attornment agreement or other recognition agreement from the applicable Ground Lessor with respect to each Ground Lease (a "**Ground Lease SNDA**") to the extent that Landlord has the right to request any such protections in accordance with the terms of such Ground Lease, and (B) if and to the extent that Landlord has any rights to receive notice and/or cure rights pursuant to the express terms of any Property Document (it being agreed that Landlord shall not be required to amend any such Property Document in order to provide Tenant with any such notice and cure rights), Landlord shall request and, at Tenant' s sole cost and expense, use commercially diligent efforts to cause the applicable Counterparty to provide Tenant with such available notice and/or cure rights; provided, however, that (1) if at any time Tenant reasonably determines that Landlord is not using commercially diligent efforts to obtain such available notice and cure rights from the applicable Counterparty, then Tenant may, but shall not be obligated to, deliver to Landlord Notice thereof (a "**Counterparty Protection Notice**") and informing Landlord of Tenant' s desire to request such available notice and/or cure rights directly from such Counterparty and (2) if, within five (5) Business Days following Tenant' s delivery of such Counterparty Protection Notice, Landlord fails to obtain such available notice and/or cure rights from the applicable Counterparty and no Disabling Event then exists with respect to the applicable Property, Tenant shall have the right to request such available notice and/or cure rights directly from such Counterparty, provided that (I) Tenant shall copy Landlord on all written communications (including email requests) and (II) if Landlord requests in writing, Tenant shall include Landlord on all telephonic, Zoom (and similar technology) and written communications with such Counterparty (and Landlord agrees to make its representatives available at mutually-convenient times so as to facilitate such communications).

(b) With respect to those certain REAs that encumber S/B Properties (each, an "**S/B REA**"), so long as no Disabling Event then exists, Tenant shall have the right, power and authority, on its own behalf or on behalf of Landlord, in its capacity as the fee or leasehold owner (as the case may be) of the applicable Property, and (subject to the further provisions of this clause (b))

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without Landlord' s consent, to amend, modify, supplement and/or amend and restate such S/B REA, to exercise any right to amend, modify, supplement and/or amend and restate such S/B REA, to approve or consent to any action or to exercise any other similar right to which, in each case, Landlord (in its capacity as the fee or leasehold owner, as applicable, of the Property) is entitled to request, consent to, exercise or approve under such S/B REA (each of the foregoing, an "**REA Action**"), subject to the following conditions: (i) not less than ten (10) days prior to the effective date of any proposed REA Action, Tenant shall provide Landlord with Notice thereof (which shall include a copy of any applicable draft amendment, modification or other document memorializing such REA Action), and an opportunity to consult with Tenant with respect thereto and (ii) if such REA Action would: (A) restrict, impair or intentionally interfere with Landlord' s right to Transfer or finance all or any portion of the applicable Demised Premises or Property during the Term; (B) restrict, impair or intentionally interfere with Landlord' s right to Transfer, finance, improve, develop, redevelop, demolish or otherwise use and enjoy the applicable Demised Premises or Property upon the Expiration Date or any earlier Property Termination Date under this Lease; (C) modify or grant any purchase option or other similar preferential right (including, without limitation, any right of first refusal, or right of first offer, to purchase) with respect to the applicable Demised Premises or Property; (D) terminate, extend the term of, or otherwise amend, modify or alter the expiration or termination provisions of such S/B REA; (E) have any material adverse effect on ingress or egress to or from, or the visibility of, the applicable Property; (F) occur or take effect after the applicable Landlord Option Exercise Date, if the applicable Property is a Landlord Option Property; or (G) increase in any material respect Landlord' s obligations, or decrease in any material respect Landlord' s rights, under such S/B REA, then, in the case of each of the foregoing, Landlord' s prior written consent shall be required, which consent shall be granted or withheld (1) in Landlord' s commercially reasonable judgment in the case of any REA Action described in clauses (A), (B), (C), (D), (F) and (G) above and (2) in Landlord' s sole discretion in the case of any REA Action described in clause (E) above.

(c) Landlord shall have the right from time to time to take or enter into any REA Action (i) with respect to any S/B REA to the extent reasonably necessary or desirable in connection with Landlord' s ownership, use, enjoyment, access, Transfer, financing or refinancing of, or with respect to, the related S/B Property (provided that Landlord shall not take any such REA Action with respect to an S/B REA if the same would undo, prevent or intentionally interfere with (A) Tenant' s right to take REA Actions in accordance with (and subject to the terms of) Section 7.3(b) or (B) any REA Action previously taken or proposed to be taken in writing by Tenant and, to the extent Landlord' s approval was required hereunder, approved by Landlord, in each case, in accordance with (and subject to the terms of) Section 7.3(b)) or (ii) with respect to any REA that relates to a Property that is not an S/B Property (a "**Non-S/B REA**"); provided, however, that not less than ten (10) days prior to the effective date of any such proposed REA Action, Landlord shall provide Tenant with Notice thereof (which shall include a copy of any applicable draft amendment, modification or other document memorializing such REA Action), as well as an opportunity to consult with Landlord with respect thereto, and, if such proposed REA Action would (i) have any material adverse effect on ingress or egress to or from, or the visibility of, the applicable Demised Premises or Property or (ii) increase in any material respect Tenant' s obligations (unless such increased obligations are monetary and Landlord agrees for itself and its successors and assigns to be responsible for such increased monetary obligations), or decrease in any material respect Tenant' s rights, under such REA or this Lease, then Tenant' s prior written consent shall be required with respect thereto, which consent shall be granted or withheld in

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Tenant' s sole discretion in the case of any REA Action described in clause (i) above and shall be granted or withheld in Tenant' s commercially reasonable judgment in the case of any REA Action described in clause (ii) above. Promptly following the execution and delivery thereof, Landlord shall provide Tenant with a copy of any executed documentation relating to any such REA Action. Notwithstanding the foregoing, for the avoidance of doubt, Tenant shall not take or enter into any REA Action with respect to any Non-S/B REA without Landlord' s prior written consent, which consent may be granted or withheld in Landlord' s sole discretion.

(d) Notwithstanding anything to the contrary in this Lease, Tenant shall not Go Dark (i) at any time during the Term with respect to any Property if the same shall violate the terms and conditions of any applicable Property Document in any material respect or (ii) solely with respect to the Baybrook Property and the Coral Ridge Property (each, a "**Baybrook/Coral Ridge Property**"), at any time prior to the second (2nd) anniversary of the PropCo Closing Date unless the Counterparty (a "**Baybrook/Coral Ridge Counterparty**") under the Ground Lease relating to the Baybrook Property and the REA relating to the Coral Ridge Property (each, a "**Baybrook/Coral Ridge Property Document**"), as applicable, waives in writing pursuant to documentation reasonably satisfactory to Landlord such Counterparty' s option under the applicable Baybrook/Coral Ridge Property Document to acquire Landlord' s right, title and interest in and to such Baybrook/Coral Ridge Property (as applicable, the "**Purchase Option**") (the "**Baybrook/Coral Ridge Lockout Period**"). Following the expiration of the Baybrook/Coral Ridge Lockout Period, prior to Going Dark at any Baybrook/Coral Ridge Property (a "**Baybrook/Coral Ridge Go Dark Event**"), Tenant shall give Landlord not less than thirty (30) days' Notice thereof. If any Baybrook/Coral Ridge Go Dark Event shall occur and such Baybrook/Coral Ridge Go Dark Event activates or triggers a Purchase Option in favor of the applicable Counterparty (which Purchase Option such Counterparty exercises and does not waive or gives Notice to such Party that it intends to exercise and/or not waive), then either Party shall, promptly after receiving notice or becoming aware thereof, provide Notice to the other Party of the same as well as a copy of any determination by such Baybrook/Coral Ridge Counterparty of the purchase price for the applicable Baybrook/Coral Ridge Property (the "**Counterparty Purchase Price**"), together with any appraisals or other documentation provided by such Baybrook/Coral Ridge Counterparty to determine the underlying fair market value (the "**Counterparty FMV**"). Upon receipt of any such Notice, notwithstanding anything to the contrary in the applicable Baybrook/Coral Ridge Property Document, at Landlord' s election exercised in its sole discretion upon Notice to Tenant (the "**Landlord-Tenant FMV Notice**"), the Parties shall determine the Landlord-Tenant FMV of such Baybrook/Coral Ridge Property in accordance with the procedures, terms and conditions set forth on Schedule 7.3(d) attached hereto, including, for the avoidance of doubt, the assumption, as set forth on such Schedule, that such Baybrook/Coral Ridge Property shall be used for the Highest and Best Use. In the event that, following its exercise of a Purchase Option, the applicable Baybrook/Coral Ridge Counterparty, either by itself or through any of its Affiliates, consummates the exercise of the Purchase Option and acquires the applicable Baybrook/Coral Ridge Property: (I) if the Landlord-Tenant FMV (if applicable) is more than five percent (5%) higher than the Counterparty FMV, then Tenant shall pay to Landlord an amount equal to the positive difference between such Counterparty FMV and Landlord-Tenant FMV (the "**FMV Differential**") on or prior to the closing of such acquisition (the "**Baybrook/Coral Ridge Closing**"), or promptly after the Baybrook/Coral Ridge Closing if Landlord is required to close before the Landlord-Tenant FMV is determined pursuant to the terms of Schedule 7.3(d); (II) if the Counterparty FMV is more than five percent (5%) higher than the

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Landlord-Tenant FMV, then Landlord shall pay to Tenant an amount equal to such FMV Differential on or prior to the Baybrook/Coral Ridge Closing, or promptly after the Baybrook/Coral Ridge Closing if Landlord is required to close before the Landlord-Tenant FMV is determined pursuant to Schedule 7.3(d); and (III) if the difference between the Counterparty FMV and the Landlord-Tenant FMV is five percent (5%) or less, then neither Party shall have any obligation to pay to the other Party the amount of any such FMV Differential. The provisions hereof (x) shall apply to each Baybrook/Coral Ridge Property so long as (and only for so long as) Simon (or any of its Affiliates) or Brookfield (or any of its Affiliates) owns any direct or indirect equity interest in such Baybrook/Coral Ridge Counterparty and such Person(s) also own a direct or indirect equity interest in Tenant (it being agreed that, with respect to any Baybrook/Coral Ridge Property, if only Simon (or any of its Affiliates) owns a direct or indirect equity interest in Tenant and only Brookfield (or any of its Affiliates) owns a direct or indirect equity interest in the applicable Baybrook/Coral Ridge Counterparty, then the provisions set forth above shall not be applicable) and (y) for the avoidance of doubt, shall no longer apply if the Purchase Option under the applicable Baybrook/Coral Ridge Property Document is no longer exercisable.

(e) This Lease, to the extent that it affects (and solely with respect to) any Ground Leased Property, is and shall be subject and subordinate to all of the terms and conditions of the applicable Ground Lease. Tenant hereby acknowledges that Tenant has reviewed (or has had the opportunity to review) all of the terms and conditions of each Ground Lease, and Tenant hereby agrees to comply in all material respects with, and not do (or fail to do) anything that would cause a violation in any material respect of, any such terms and conditions. Without limiting the generality of the foregoing or any other terms of this Lease, (i) Tenant shall carry and maintain all insurance in such amounts, and with such policy provisions, coverages and certificates, as Landlord may be required to maintain as the ground lessee under any Ground Lease and (ii) to the extent that Landlord is required to obtain the consent or approval of any Ground Lessor to any Alterations, Transfer or other action that Tenant may propose to take under this Lease with respect to any Ground Leased Property, Tenant shall not take such action until such Ground Lessor shall have approved such action in accordance with the terms of such Ground Lease. Nothing in this Lease shall be deemed to be or construed as an amendment or modification of the terms of any Ground Lease.

(f) Tenant shall reasonably cooperate with Landlord in connection with the amendment or modification of or to any Ground Leases to the extent such amendment or modification is reasonably necessary or desirable in connection with Landlord' s ownership, use, enjoyment, access, sale or other Transfer, financing or refinancing of the applicable Ground Leased Property (provided that Landlord shall not enter into any such amendment or modification with respect to an S/B Ground Lease if the same would undo, prevent or intentionally interfere with (i) Tenant' s right to take S/B Ground Lease Actions in accordance with (and subject to the terms of) Section 7.3(g) or (y) any S/B Ground Lease Action previously taken or proposed to be taken in writing by Tenant and, to the extent Landlord' s approval was required, approved by Landlord in accordance with (and subject to the terms of) Section 7.3(g)); provided, however, that not less than ten (10) days prior to the effective date of the proposed amendment or modification, Landlord shall provide Tenant with Notice thereof (which shall include a copy of the applicable draft amendment or modification), as well as an opportunity to consult with Landlord with respect thereto, and, if such proposed amendment or modification would (i) have any material adverse effect on ingress or egress to or from, or the visibility of, the

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applicable Ground Leased Property or (ii) increase in any material respect Tenant' s obligations, or decrease in any material respect Tenant' s rights, under the applicable Ground Lease or this Lease, then Tenant' s prior written consent shall be required with respect thereto, which consent shall be granted or withheld in Tenant' s sole discretion in the case of any amendment or modification described in clause (i) above and shall be granted or withheld in Tenant' s commercially reasonable judgment in the case of any amendment or modification described in clause (ii) above. Promptly following the execution and delivery thereof, Landlord shall provide Tenant with an executed copy of any Ground Lease amendment or modification entered into pursuant to this Section 7.3(f). Notwithstanding the foregoing, but without limiting Tenant' s rights under Section 7.3(g), Tenant shall have no right to amend or modify any Ground Lease without Landlord' s prior written consent, which consent may be granted or withheld in Landlord' s sole discretion.

(g) So long as no Disabling Event then exists, to the extent that Landlord, as the lessee under any Ground Lease encumbering an S/B Property (an "**S/B Ground Lease**"), has the right to approve or consent to any Development Action with respect to the applicable Shopping Center, Tenant shall have the right to direct Landlord (at Tenant' s sole cost and expense) to exercise such approval or consent on Tenant' s behalf, and Landlord shall (at Tenant' s sole cost and expense) execute such amendments or modifications (which shall be in form and substance reasonably satisfactory to Landlord) to such S/B Ground Lease as may be necessary to effectuate any such approval or consent by Tenant (each such action, an "**S/B Ground Lease Action**"); provided, however, that any such S/B Ground Lease Action shall be subject to the following terms and conditions: (i) not less than ten (10) days prior to the effective date of any proposed S/B Ground Lease Action, Tenant shall provide Landlord with Notice thereof (which shall include a copy of Tenant' s proposed draft of any such approval, consent, amendment or modification), and an opportunity to consult with Tenant with respect thereto, and (ii) if such S/B Ground Lease Action would: (A) restrict or impair Landlord' s right to Transfer or finance all or any portion of the applicable Ground Leased Property during the Term; (B) restrict or impair Landlord' s right to Transfer, finance, improve, develop, redevelop, demolish or otherwise use and enjoy the applicable Ground Leased Property upon the Expiration Date or any earlier Property Termination Date under this Lease; (C) modify or grant any purchase option or other similar preferential right (including, without limitation, any right of first refusal, or right of first offer, to purchase) with respect to the applicable Ground Leased Property; (D) terminate, extend the term of or otherwise amend, modify or alter the expiration or termination provisions of such S/B Ground Lease; (E) have any material adverse effect on ingress or egress to or from, or the visibility of, the applicable Ground Leased Property; (F) occur or take effect after the applicable Landlord Option Exercise Date, if the applicable Ground Leased Property is a Landlord Option Property; or (G) increase in any material respect Landlord' s obligations, or decrease in any material respect Landlord' s rights, under such S/B Ground Lease, then, in each case, Landlord' s prior written consent shall be required, which consent shall be granted or withheld (1) in Landlord' s commercially reasonable judgment in the case of any S/B Ground Lease Action described in clauses (A), (B), (C), (D), (F) and (G) above, and (2) in Landlord' s sole discretion in the case of any S/B Ground Lease Action described in clause (E) above.

(h) From and after the Partial Property Termination Date with respect to any Tenant Option Property, so long as no Disabling Event exists, Landlord shall use commercially reasonable efforts to comply (or cause its applicable Related Users to comply) in all material

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respects with the terms of the Property Documents to the extent that such terms are applicable to the Common Areas and/or the Landlord Retained Portion of such Tenant Option Property (collectively, "**Applicable Terms**"). Provided that no Disabling Event exists, in the event that Landlord fails to comply (or cause its applicable Related Users to comply) in any material respect with any Applicable Terms, or fails to enforce the obligations of any Counterparty that relate to the Applicable Terms, and such failure, if uncured, would reasonably be expected to result in a material adverse effect on Tenant or the applicable Tenant Retained Portion (a "**Landlord TO Failure**"), then Tenant may, but shall not be obligated to, deliver to Landlord Notice of such Landlord TO Failure and of Tenant' s intention to effect the cure thereof (a "**Tenant Cure Notice**"). If the applicable Landlord TO Failure shall remain uncured for thirty (30) days' following Tenant' s delivery of the Tenant Cure Notice (or, in the event of an emergency (which, for purposes of this Section 7.3(h), shall mean a condition that presents an imminent threat of material harm to persons or property), such shorter period as shall be reasonable under the circumstances), then, so long as no Disabling Event exists, Tenant may diligently and in accordance with all applicable terms of this Lease prosecute the cure of such Landlord TO Failure. Notwithstanding anything to the contrary herein (except in the event of an emergency or where such failure could reasonably be expected to result in an imminent loss of insurance or imminent imposition of any fine or penalty for which Tenant would be responsible), the foregoing right of Tenant to cure a Landlord TO Failure shall be tolled during all times in which Landlord is using commercially reasonable efforts to cure such Landlord TO Failure. Landlord shall, within thirty (30) days after receipt of Tenant' s demand and supporting documentation in reasonable detail, reimburse Tenant for the Costs and Expenses incurred by Tenant in effectuating such cure.

7.4 **Operating Covenant**.

(a) Except during any applicable Permitted Go Dark Event and subject to Tenant' s other rights to Go Dark pursuant to this Section 7.4, Tenant shall at all times during the Term continuously operate each Demised Premises in accordance with the Permitted Use. Tenant hereby acknowledges and agrees that such covenant of continuous operation is a material inducement to Landlord entering into this Lease and that Landlord would not enter into this Lease without such inducement.

(b) Notwithstanding the foregoing, but without limiting any of Tenant' s other obligations hereunder, Tenant shall have the right, without being in breach of the covenant of continuous operation set forth in Section 7.4(a), beginning in the third (3rd) Lease Year of the Initial Term, to Go Dark at any Property (a "**Go Dark Event**" and any Property subject to a Go Dark Event, a "**Go Dark Property**") subject to the following limitations: (i) Tenant shall provide Landlord (A) not less than thirty (30) days' notice of such Go Dark Event, which Notice shall specify the date as of which Tenant intends to Go Dark at such Property and (B) simultaneously with such delivery, a copy of any notice of Tenant' s intention to Go Dark at such Property delivered by Tenant to the Counterparty under any applicable Property Document, (ii) such Go Dark Event shall not violate any applicable Property Requirements, (iii) Tenant shall continue to comply with all terms of this Lease applicable to such Property during such period (other than, for the application of this provision, the covenant of continuous operation as set forth in clause (a) of this Section 7.4), Tenant hereby agreeing that, except upon a removal of such Property from this Lease pursuant to Landlord' s exercise of a Landlord Option, there shall be no reduction or change in the Rent following any Go Dark Event, and (iv) such Go Dark Event shall not violate the applicable

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Maximum Go Dark Limitations set forth in clauses (c) and (d) of this Section 7.4 or elsewhere in this Lease. Tenant' s rights to Go Dark at Properties in accordance with the foregoing limitations are referred to collectively herein as "**Tenant' s Go Dark Rights**."

(c) During each of (i) the period beginning on the third (3rd) anniversary of the Commencement Date and ending on the tenth (10th) anniversary of the Commencement Date (the "**First Limited Go Dark Period**") and (ii) the period beginning on the day after such tenth (10th) anniversary of the Commencement Date and ending on the fifteenth (15th) anniversary of the Commencement Date (the "**Second Limited Go Dark Period**"; each of the First Limited Go Dark Period and the Second Limited Go Dark Period is a "**Limited Go Dark Period**"), and subject to Tenant' s further Go Dark Rights pursuant to clause (d) of this Section 7.4, the aggregate sum of all Reference Base Rent Allocation Amounts (without duplication) of all Properties described in clauses (A), (B) and (C) immediately hereafter, shall not exceed fifteen percent (15%) of the Reference Base Rent (each such fifteen percent (15%) limitation, as it applies independently to each such Limited Go Dark Period, and as the same may be adjusted pursuant to the provisions of Section 1.9, the "**Maximum Initial Go Dark Limitation**"): (A) any Go Dark Property (unless, for the avoidance of doubt, such Property is no longer a Go Dark Property as a result of Tenant' s re-commencement of operations at such Go Dark Property in accordance with (and subject to) clause (f) or (h) of this Section 7.4); (B) all other Properties that became Go Dark Trigger Properties during such Limited Go Dark Period (or, in the case of the First Limited Go Dark Period, at any time prior to the commencement thereof); and (C) all Go Dark/Substitution Properties for the Permitted Substitution Period that corresponds to such Limited Go Dark Period. For the avoidance of doubt, (1) each Go Dark/Substitution Property shall count toward both (I) the Maximum Initial Go Dark Limitation for the applicable Limited Go Dark Period and (II) the Maximum Substitution Limitation for the corresponding applicable Permitted Substitution Period pursuant to Section 1.7(b), such that the Maximum Initial Go Dark Limitation and the Maximum Substitution Limitation for each such period shall constitute a single basket, and (2) the Maximum Initial Go Dark Limitation for the First Limited Go Dark Period shall be calculated independently of the Maximum Initial Go Dark Limitation for the Second Limited Go Dark Period, and vice versa, such that (aa) any Go Dark Trigger Properties counted toward the First Limited Go Dark Period shall not be counted toward the Maximum Initial Go Dark Limitation for the Second Limited Go Dark Period (i.e., the baskets applicable to the two Limited Go Dark Periods are not exhaustive) and (bb) if Tenant fails to reach the Maximum Initial Go Dark Limitation during the First Limited Go Dark Period, without limiting Tenant' s separate Go Dark Rights as provided in (and subject to the terms of) Section 7.4(d), then Tenant shall be deemed to have waived such excess Go Dark Rights and the same shall not be carried forward or otherwise credited to the Maximum Initial Go Dark Limitation applicable to the Second Limited Go Dark Period. Notwithstanding anything to the contrary in this Lease, in the event that (AA) a Go Dark Trigger Cure occurs with respect to any Go Dark Trigger Property in accordance with (and subject to) Section 7.4(h) or (BB) this Lease terminates with respect to any Go Dark Trigger Property as a result of Landlord' s exercise of any Landlord Option following an Accelerated Landlord Option Election, then such Go Dark Trigger Property shall (from and after the occurrence of such Go Dark Trigger Cure or the applicable LO Termination Date, as the case may be) no longer count towards the applicable Maximum Initial Go Dark Limitation for any purposes of this Lease.

(d) Notwithstanding anything to the contrary in the foregoing, but subject to the other terms of this Lease (including the limitations set forth in Section 7.4(b)), during the period

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beginning on the third (3rd) anniversary of the Commencement Date and ending on the date that is the fifteenth (15th) anniversary of the Commencement Date, Tenant shall have the further right at any time (but, during any Limited Go Dark Period, only if Tenant has then reached the applicable Maximum Initial Go Dark Limitation), to Go Dark at one or more Properties ("**Additional Go Dark Properties**") so long as the aggregate annual Base Rent Allocation Amounts of all such Additional Go Dark Properties then subject to this Lease shall not exceed the lesser of (i) Ten Million Dollars ($10,000,000) and (ii) fifteen percent (15%) of the aggregate annual Base Rent Allocation Amounts of all Properties then subject to this Lease (i.e., at the time Tenant proposes to Go Dark at a Property or Properties pursuant to this Section 7.4(d)) (as applicable, such limitation, the "**Maximum Go Dark Additional Limitation**" and, together with each Maximum Initial Go Dark Limitation, collectively, the "**Maximum Go Dark Limitations**"), it being agreed that the foregoing clause (ii) shall only be tested as of the date Tenant proposes to Go Dark at a Property or Properties pursuant to this Section 7.4(d) (i.e., so that Tenant shall not be in breach of such clause (ii) solely as a result of a subsequent decrease in such aggregate annual Base Rent Allocation Amounts resulting from the removal of any portion of the Demised Premises from this Lease). For the avoidance of doubt, in the event that (A) this Lease terminates with respect to any Additional Go Dark Property (whether as a result of the exercise of a Landlord Option with respect thereto or otherwise), or (B) Tenant re-commences operations at any Additional Go Dark Property in accordance with (and subject to) clause (f) or (h) of this Section 7.4, the Base Rent Allocation Amount of such Additional Go Dark Property shall (from and after the applicable Property Termination Date or the date that Tenant re-commences operations, as applicable) no longer count towards the Maximum Go Dark Additional Limitation for purposes of this Lease.

(e) Notwithstanding anything to the contrary herein, Tenant shall not be deemed to be in breach of the covenant of continuous operation set forth in Section 7.4(a) with respect to any Property to the extent that the cessation of Tenant' s operations at such Property is due to any of the following (each, an "**Excluded Cessation**"): (1) a closure of the applicable Store that is required pursuant to applicable Legal Requirements in the local jurisdiction in which such Demised Premises is located, including mandatory closures, (2) temporary closures necessitated by or reasonably advisable (as determined by Tenant in its good faith judgment) in connection with emergencies, civil unrest, global pandemics (e.g., the COVID-19 pandemic) and other material health-related events affecting a substantial portion of the national or applicable State or local population or other similar extraordinary events, (3) closures on Sundays to the extent required by any applicable "blue" laws, (4) temporary closures necessitated by a Casualty or Condemnation, (5) temporary closures to the extent necessary or reasonably advisable in connection with Alterations undertaken by Tenant in accordance with the terms and conditions of this Lease (including Article VIII and Article XII), (6) discretionary (and temporary) closures in the commercially reasonable judgment of Tenant for not more than two (2) weeks in any twelve (12) month period and (7) ordinary course closures outside of regular business hours (collectively, and together with Tenant' s Go Dark Rights, "**Permitted Go Dark Events**").

(f) In the event that any Go Dark Event (other than a Permitted Go Dark Event) continues for more than six (6) months (a "**Go Dark Trigger Event**" and such Property, a "**Go Dark Trigger Property**"), then (i) such Go Dark Trigger Event shall not in and of itself constitute an Event of Default under this Lease and (ii) unless (A) Landlord makes an Accelerated Landlord Option Election pursuant to Section 7.4(g) or (B) the applicable Go Dark Trigger Property is an Additional Go Dark Property or a Go Dark-No Substitution Property, Tenant shall substitute such

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Go Dark Trigger Property with a Qualified Replacement Property as of a Substitution Date that is not less than nine (9) months after the occurrence of such Go Dark Trigger Event and shall comply with all of its obligations set forth in Section 1.7 with respect to such Go Dark Trigger Property. For the avoidance of doubt, (A) in no event shall Tenant be required to substitute any Additional Go Dark Property or Go Dark-No Substitution Property with any other property pursuant to the provisions of this Lease, and (B) Tenant shall have the right to re-commence operations at a Go Dark Property in accordance with the terms of this Lease (including the Permitted Use) before such Go Dark Property becomes a Go Dark Trigger Property.

(g) In the event that any Go Dark Trigger Event shall occur, unless and until Tenant proposes (with respect to such Go Dark Trigger Property) a Replacement Property that has been determined or deemed to constitute a Qualified Replacement Property pursuant to the procedure set forth in Section 1.7(c)(i), Landlord may elect (an "**Accelerated Landlord Option Election**"), within three (3) months after the occurrence of such Go Dark Trigger Event (i.e., no later than nine (9) months following the applicable Go Dark Event), by delivering Notice thereof to Tenant (an "**Accelerated Landlord Option Notice**"), to re-classify any such Go Dark Trigger Property as (A) a Landlord Option Property (if such Go Dark Property was not already a Landlord Option Property) or (B) an "**Accelerated Landlord Option Property**" (if such Go Dark Property was already a Landlord Option Property) (any such Go Dark Trigger Property, as so re-classified, a "**Re-Classified Landlord Option Property**"). On or after the date as of which any Go Dark Trigger Property becomes a Re-Classified Landlord Option Property, Landlord shall have the right to deliver a Landlord Option Notice with respect thereto, whereupon the terms and conditions set forth in Section 1.5 shall apply thereto, except that, for the avoidance of doubt and notwithstanding anything to the contrary contained therein: (1) the LO Termination Date with respect to such Re-Classified Landlord Option Property shall be a date selected by Landlord (and set forth in such Landlord Option Notice) that is not earlier than three (3) months after the delivery of such Landlord Option Notice; (2) for the avoidance of doubt, none of the ROFO Right, the Modified ROFO Right or the First Offer Right shall apply to, and the Parties shall have no rights or obligations under Schedule 1.9(g) with respect to, any such Re-Classified Landlord Option Property; and (3) no such Re-Classified Landlord Option Property shall count against the per Lease Year limit on Landlord Option Properties set forth in Section 1.5(a).

(h) Notwithstanding the foregoing, so long as no Disabling Event then exists, if Tenant re-commences operations at a Go Dark Trigger Property in accordance with the terms of this Lease (including the Permitted Use) prior to (i) the date (if any) on which Landlord delivers a Landlord Option Notice with respect thereto or (ii) the date as of which (if applicable) Tenant has (with respect to such Go Dark Triger Property) proposed a Replacement Property that has been determined or deemed to constitute a Qualified Replacement Property pursuant to the procedure set forth in Section 1.7(c)(i) with respect to such Go Dark Trigger Property ("**Tenant' s Go Dark Cure Right**"), then such Property shall cease to constitute a Go Dark Trigger Property (a "**Go Dark Trigger Cure**") and Landlord shall thereafter have no right to make an Accelerated Landlord Option Election (or exercise any Landlord Option pursuant to any Accelerated Landlord Option Election already made) with respect to such Property or to require Tenant to substitute such Property pursuant to Section 7.4(f); provided, however, that (I) if a further Go Dark Event (other than a Permitted Go Dark Event) occurs with respect to any such Property within twelve (12) months after Tenant so re-commences operations at such Property, then such Property shall immediately constitute a Go Dark Trigger Property and Landlord may immediately send a

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Landlord Option Notice with respect to such Go Dark Trigger Property (which Landlord Option Notice shall specify an LO Termination Date that is no earlier than thirty (30) days after the delivery of such Landlord Option Notice to Tenant) and Tenant shall thereafter comply with all of its applicable obligations under Section 7.4(e) with respect thereto, and (II) Tenant shall not be permitted to exercise Tenant' s Go Dark Cure Right (x) more than once for any particular Property or (y) with respect to more than three (3) Properties during any individual Lease Year.

7.5 **Signs**. The size, color, design, location and specifications of all exterior signs, whether ground-mounted, pylon, window-, door- or building-mounted or otherwise, to be located on or in any Demised Premises or any other portion of any applicable Property, shall (a) comply with all applicable Property Requirements and (b) require Landlord' s prior written consent, not to be unreasonably withheld, conditioned or delayed, if and solely to the extent that any such sign (i) affects the structural integrity of any applicable Leased Improvements or (ii) materially and adversely impairs the then-existing visibility of such Demised Premises or Property (it being understood that, except as expressly set forth in this Section 7.5, signs shall not be subject to any approval by Landlord).

ARTICLE VIII
ALTERATIONS

8.1 **Alterations and Additions**.

(a) Tenant shall not make (or cause to be made) (i) any alterations, renovations, modifications, additions (including, without limitation, the construction of any additional buildings), improvements, restorations, replacements or removals, excluding (for the avoidance of doubt) ordinary maintenance and repairs made, constructed or performed in accordance with the terms of this Lease (collectively, "**Alterations**") of or to any Demised Premises that affect the structural integrity of the Leased Improvements thereof ("**Structural Alterations**") or (ii) any Alterations that are not Structural Alterations ("**Non-Structural Alterations**") of or to any Demised Premises, the aggregate cost of which Non-Structural Alterations at such Demised Premises exceeds an amount equal to the greatest of (A) Two Hundred Fifty Thousand Dollars ($250,000) in any Lease Year, (B) four (4) months of the then current Base Rent Allocation Amount attributable to such Demised Premises and (C) (1) five percent (5%) of the Reference Property Value of the applicable Property in any Lease Year (the "**5% Threshold**"), if Tenant does not make a 10% Threshold Election, or (2) ten percent (10%) of such Reference Property Value in any two (2) Lease Year Period (the "**10% Threshold**"), if Tenant makes a 10% Threshold Election (the greatest of (A), (B) and (C), the "**Alterations Threshold**"), in each case without the prior written consent of Landlord (which shall be subject to the applicable approval standard set forth in this Section 8.1(a)). In the event that the aggregate cost of the Non-Structural Alterations with respect to any applicable Demised Premises in any Lease Year exceeds the 5% Threshold ("**Excess Non-Structural Alterations**"), Tenant may, upon Notice to Landlord (which Notice shall describe in reasonable detail the applicable Alterations and the estimated cost thereof), make (or cause to be made) such Excess Non-Structural Alterations without Landlord' s consent (a "**10% Threshold Election**"), so long as the aggregate cost of (1) such Non-Structural Alterations and (2) all Non-Structural Alterations made or to be made during either the immediately preceding or the immediately succeeding Lease Year shall, in each case, not exceed the 10% Threshold (it being understood that any Non-Structural Alterations costing in excess of such 10% Threshold in any

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consecutive period of two (2) years shall require Landlord' s prior written consent (which shall be subject to the applicable approval standard set forth in the immediately succeeding sentence)). Landlord shall grant or withhold its consent (subject to the Deemed Approval Procedure) to any such Alterations (I) in its sole and absolute discretion with respect to any Structural Alterations and (II) in Landlord' s commercially reasonable judgment with respect to any Non-Structural Alterations that exceed the Alterations Threshold (it being agreed that Landlord' s consent shall not be required for Alterations that do not exceed the Alterations Threshold); provided, however, if Landlord has approved an Alteration (which approval shall be subject to the applicable approval standard set forth in this sentence) under the provisions of Section 8.3 relating to LO Capex Work, and provided that Tenant shall have provided all information and documentation required in connection with such Alteration under this Section 8.1(a), then no separate approval by Landlord shall be required with respect to such Alteration under this Section 8.1(a). Notwithstanding anything to the contrary herein, the provisions of this Section 8.1(a) shall (x) be subject to the provisions relating to Emergency Capex in Section 8.3(d), and (y) not apply to any Work constituting deferred maintenance that is to be completed within the first (1st) Lease Year, provided that, prior to commencing the same, Tenant provides Landlord with an Officer' s Certificate describing the Work that constitutes deferred maintenance and stating that the same is being performed pursuant to a property condition report or a similar recommendation from a third party reasonably satisfactory to Landlord (with such Officer' s Certificate being accompanied by a copy of such property condition report or third party recommendation (as applicable)).

(b) In connection with any request for Landlord' s consent to an Alteration under Section 8.1(a), Tenant shall deliver to Landlord an Officer' s Certificate pursuant to which Tenant shall certify either (i) the Tangible Net Worth of the Lease Guarantors, which Tangible Net Worth must equal or exceed the Reference Net Worth or (ii) as to the then aggregate amount of all outstanding and past due payables (excluding, for the avoidance of doubt, any payables that are the subject of a bona fide dispute conducted in accordance with any applicable provisions of Section 4.2) for all Alterations at all of the Properties (including Properties that become Severed Properties) and all of the DC Properties (collectively, the "**Outstanding Alterations Payables**"), and if the amount of such Outstanding Alterations Payables exceeds Seven Million Five Hundred Thousand Dollars ($7,500,000) (the "**Outstanding Alterations Payables Threshold**") and Tenant has not delivered a certification pursuant to clause (i) above, then Landlord may, at Landlord' s election exercised in its sole discretion, require Tenant to deposit cash with a nationally recognized Title Company or another nationally recognized institutional third party depository selected by Landlord and reasonably approved by Tenant in an amount equal to the lesser of (A) 110% of the cost of the Alteration (as reasonably determined by Tenant and supported by any back-up documentation reasonably requested by Landlord, provided that in all events Tenant' s policies and practices for accruing amounts constituting Outstanding Alterations Payables shall be consistent with the policies and practices of the Tenant Parties with respect to their other accounts payable) that is the subject of such request for Landlord' s consent, and (B) the amount of Outstanding Alterations Payables that exceed the Outstanding Alterations Payables Threshold, which cash shall be disbursed to Tenant subject to conditions consistent with the Restoration Conditions, to the extent the same are applicable; provided, however, that (1) such cash shall be made available to Landlord for the completion of such Alteration in the event that Tenant fails to complete the same in accordance with the terms and conditions of this Lease and such failure continues beyond any applicable notice and cure periods, (2) in the event Tenant is completing such Alterations in accordance with the applicable terms and conditions of this Lease, such cash may be disbursed to

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Tenant periodically, pursuant to an escrow arrangement reasonably acceptable to the Parties, in the manner, and subject to similar conditions, as the Restoration Conditions, as applicable, and (3) following the completion of such Alteration by Tenant, any remaining deposited amount shall be returned to Tenant in accordance with the terms and conditions of this Lease so long as no Disabling Event then exists. Alternatively, Tenant may elect to deposit cash with Landlord (or, at Tenant' s option, to deliver to Landlord an irrevocable standby letter of credit in form and substance reasonably acceptable to Landlord and issued by a Qualified Financial Institution or other financial institution reasonably acceptable to Landlord), in each case in an amount equal to the lesser of (I) 110% of the cost of the Alteration (as reasonably determined by Tenant, subject to the foregoing provisions with respect to such estimate) that is the subject of such request for Landlord' s consent and (I) the amount of Outstanding Alterations Payables that exceed the Outstanding Alterations Payables Threshold, which cash or letter of credit (AA) may be drawn by Landlord for the completion of such Alteration in the event Tenant fails to complete the same in accordance with the applicable terms and conditions of this Lease and such failure continues beyond any applicable notice and cure periods, (BB) in the event Tenant is completing such Alterations in accordance with the applicable terms and conditions of this Lease, Landlord shall, to the extent such letter of credit permits partial draws, permit amounts to be disbursed to Tenant periodically, pursuant to an escrow arrangement reasonably acceptable to the Parties, in the manner, and subject to similar conditions, as the Restoration Conditions, as applicable, and (CC) shall be returned to Tenant upon the completion of such Alteration in accordance with such terms and conditions so long as no Disabling Event then exists.

(c) Notwithstanding the foregoing, Tenant shall have the right, without Landlord' s prior written consent, to develop any vacant land or parking areas that are owned or ground leased by Landlord and comprise a part of the Demised Premises hereunder ("**Development Parcels**") if the following conditions are satisfied: (i) not less than sixty (60) days prior to the effective date of any proposed Alteration on a Development Parcel, Tenant shall provide Landlord with Notice thereof (which shall include a description of the portion of the Development Parcel to be developed, the proposed plans and specifications for such proposed Alteration, the estimated construction schedule and cost of such proposed Alteration, evidence reasonably acceptable to Landlord that the proposed Alteration will comply with all applicable Property Documents, and a statement or description (and, if applicable, a draft) of any proposed REA Action that may be required in connection therewith), as well as an opportunity to consult with Tenant with respect thereto; (ii) such proposed Alteration shall comply with the Construction Standards (except to the extent otherwise waived by Landlord in writing); and (iii) such proposed Alteration shall satisfy the development parameters set forth on Schedule 8.1(a) (the "**Development Parameters**") attached hereto (except to the extent any such parameters may be otherwise waived by Landlord in writing with respect to any proposed Alteration on a Development Parcel in Landlord' s sole and absolute discretion), it being agreed that if any such Alteration fails to comply with the condition specified in clause (ii) or clause (iii), Landlord' s prior written consent shall be required, which may be withheld in Landlord' s sole and absolute discretion. For the avoidance of doubt, if an REA Action or Ground Lease amendment or modification is required or proposed in connection with an Alteration and Landlord' s consent is required for such REA Action or Ground Lease amendment or modification pursuant to the terms of Section 7.3, then nothing in this Section 8.1(c) shall detract from such separate Landlord consent right, which shall be governed by the terms of such Section.

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(d) Tenant shall make all Alterations that are, and perform all other Work that is, required to cause any Property (other than the Landlord Retained Portion and Common Areas of a Tenant Option Property following a Partial Property Termination Date and subject to the provisions of Article X) or Demised Premises to comply with applicable Property Requirements and the Permitted Use, including the repair, maintenance and, if necessary, periodic replacement of (t) HVAC equipment, (u) bathrooms, (v) parking surfaces, (w) roof and structure, (x) signage, (y) floors and (z) other customary Capital Expenditures (collectively, "**Required Work**"); provided, however, that no Structural Alterations shall be required in the final two (2) Lease Years of the Initial Term (unless Tenant has exercised a Renewal Option) or (if applicable) the final Lease Year of any Renewal Term unless the failure to perform such Alterations would violate any applicable Property Requirements. Notwithstanding anything to the contrary herein, any restoration that is made in connection with a Casualty or Condemnation shall not be governed by this Section 8.1 but shall be governed by the provisions of Article XII.

(e) If Tenant makes any Alterations pursuant to this Article VIII or as required by Article X or Article XII, in each case, with respect to any Demised Premises (such Alterations and all work relating thereto, collectively, the "**Work**"), then: (i) such Work (when completed) shall not lessen the market value of such Demised Premises in any material respect; (ii) such Work shall not, with respect to any Tenant Option Property as to which Tenant shall have theretofore delivered a Tenant Option Notice, materially increase the cost to Landlord of any TO Separation Work with respect thereto (unless Tenant shall undertake to bear such increased cost); (iii) Tenant shall perform such Work (or cause such Work to be performed) in a good and workmanlike manner, and Tenant shall complete such Work (or cause such Work to be completed) expeditiously in compliance in all material respects with all applicable Property Requirements and the Construction Standards; (iv) if any such Work involves the replacement of any Fixtures or parts thereto, all replacement Fixtures or parts (as applicable) shall have a Useful Life at least equal to the remaining Useful Life of the Fixtures being replaced immediately prior to, if applicable, the occurrence of the event that necessitated such replacement (assuming such replaced Fixtures were then in the condition required under this Lease); (v) subject to Tenant' s right to contest under Section 4.2, Tenant shall promptly, after written notice of the filing thereof, discharge and remove (or cause to be discharged and removed) (whether by payment, bonding or otherwise) all liens filed against such Demised Premises arising out of such Work in accordance with Section 20.17; (vi) Tenant shall procure and pay for all permits and licenses required in connection with any such Work; and (vii) subject to the provisions of Section 8.2 below and except for any Alterations that Tenant is entitled or required hereunder to remove (and which, in each such case, Tenant does remove) during or at the end of the Term, the Alterations resulting from such Work shall be the property of Landlord and shall be subject to this Lease and Tenant shall execute and deliver to Landlord any instrument or document reasonably requested by Landlord evidencing the assignment to Landlord of all estate, right, title and interest (other than the leasehold estate created hereby) of Tenant or any other Person thereto or therein.

8.2 **Title to Alterations**. Landlord shall have the right to require Tenant to remove, upon the Expiration Date or any earlier Property Termination Date, any Alterations (other than any Alterations that were required to be made by Tenant (and which Tenant did make) during the Term pursuant to any applicable Legal Requirements) if (a) such Alterations are not customary (e.g., of an extraordinary or unusual character) for Tenant' s then current use of the applicable Demised Premises in accordance with this Lease (unless Landlord otherwise agrees in writing that the

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removal of any such Alterations would not be required), or (b) from after the date on which Tenant changes the use of any Demised Premises to a use that is substantially different from its use as of the Commencement Date, if Landlord conditioned its approval (to the extent such approval is otherwise required under this Lease) of such Alterations upon Tenant' s removal thereof from the such Demised Premises at the end of the Term (collectively, "**Required Removal Alterations**"). Nothing in this Section 8.2 shall limit (i) any of Tenant' s obligations under this Lease, including, without limitation, with respect to the repair of any damage resulting from any removal of Alterations or, if otherwise required pursuant to the terms of this Lease, to indemnify, protect and hold harmless the Landlord Indemnified Parties from and against any Costs and Expenses incurred by any of them in connection with such removal and/or repair, or (ii) Tenant' s right in accordance with (and subject to) the terms of this Lease to remove any Alterations upon the Expiration Date or on or after any earlier Property Termination Date.

8.3 **Capital Expenditures at Landlord Option Properties**.

(a) Within ninety (90) days prior to the first (1st) day of January of each calendar year during the Term commencing on January 1, 2022, Tenant shall submit to Landlord (for its information only and not for its approval) an annual capital plan for each Demised Premises, which shall set forth all proposed or planned (as of such date of delivery) capital expenditures with respect to each Demised Premises for such calendar year (an "**Annual Capex Plan**" and, together with any LO Capex Plan, each, a "**Required Capex Plan**"). Landlord agrees, for the avoidance of doubt, that no Annual Capex Plan shall be required for the remainder of the 2020 calendar year and acknowledges that Tenant has submitted to Landlord the Annual Capex Plan for the 2021 calendar year.

(b) Not less than sixty (60) days prior to making any Capital Expenditures with respect to any Landlord Option Property (collectively, "**LO Capex Work**"), except to the extent such LO Capex Work constitutes Required LO Capex Work (as to which Section 8.3(c) shall apply), (i) if such LO Capex Work shall occur from and after the Landlord Option Exercise Date or (ii) if such LO Capex Work shall occur prior to such Landlord Option Exercise Date and the cost of such LO Capex Work on a per project basis shall exceed Two Hundred Fifty Thousand Dollars ($250,000) (such LO Capex Work, "**Material Discretionary LO Capex Work**"), Tenant shall submit to Landlord for its approval (which shall be granted or withheld in accordance with Section 8.3(d)) an LO Capex Plan with respect to such Material Discretionary LO Capex Work. As used herein, "**LO Capex Plan**" means, with respect to any LO Capex Work, a capital plan that sets forth (1) a reasonably detailed description of the nature and scope of such LO Capex Work, (2) Tenant' s reasonable estimate (together with any supporting documentation reasonably requested by Landlord, to the extent available) of the cost of such LO Capex Work in the aggregate, (3) the planned commencement date and anticipated completion date for such LO Capex Work and (4) Tenant' s reasonable determination (together with any supporting documentation reasonably requested by Landlord) of the amortization period of such LO Capex Work, which shall be the lesser of (I) twenty (20) years and (II) the Useful Life of such LO Capex Work (as applicable, the "**Amortization Period**").

(c) Not less than sixty (60) days prior to commencing any LO Capex Work that constitutes Required Work ("**Required LO Capex Work**"), (i) if such Required LO Capex Work shall occur prior to the applicable Landlord Option Exercise Date and the cost of such LO Capex

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Work on a per project basis shall exceed Two Hundred Thousand Dollars ($200,000) or (ii) if such Required LO Capex Work shall occur from and after the applicable Landlord Option Exercise Date and the cost of such LO Capex Work on a per project basis shall exceed Twenty-Five Thousand Dollars ($25,000) (such Required LO Capex Work, "**Material Required LO Capex Work**" and, together with Material Discretionary LO Capex Work, collectively, "**Material LO Capex Work**"), Tenant shall submit to Landlord for its approval (which shall be granted or withheld in accordance with Section 8.3(d)) an LO Capex Plan with respect to such Material Required LO Capex Work.

(d) Landlord' s approval with respect to any LO Capex Plan shall be granted or withheld (i) in Landlord' s commercially reasonable judgment if the applicable LO Capex Work shall occur prior to Landlord' s exercise of the applicable Landlord Option, (ii) in Landlord' s sole and absolute discretion if such LO Capex Work shall occur following Landlord' s exercise of such Landlord Option (including pursuant to a Re-Classified Landlord Option Election) and (iii) within forty-five (45) days after Tenant' s delivery of such LO Capex Plan to Landlord. Notwithstanding the foregoing or anything herein to the contrary, if any such LO Capex Work or other Work is required to prevent imminent harm to persons or property or to otherwise address an emergency (as determined by Tenant in its reasonable discretion) at the applicable Property ("**Emergency Capex**"), then Tenant may submit its request for Landlord' s approval in a Notice (an "**Emergency Capex Notice**") contained in an envelope marked "PRIORITY" and containing the following bold-faced, conspicuous (i.e., in a font size that is not less than fourteen (14) point) legend at the top of the first page thereof: "**THIS IS A REQUEST UNDER THAT CERTAIN RETAIL MASTER LEASE AMONG J. C. PENNEY CORPORATION, INC., J. C. PENNEY PROPERTIES, LLC, JCPENNEY PUERTO RICO, INC. AND PENNEY TENANT I LLC. FAILURE TO RESPOND TO THIS REQUEST WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED**". In the event that Tenant submits any such Emergency Capex Notice to Landlord in accordance with the foregoing, then Landlord shall grant or withhold such approval within five (5) Business Days after such Emergency Capex Notice is given, and if Landlord fails to grant or withhold such approval within such five (5) Business Day period, then Landlord' s approval shall be deemed to have been granted with respect to such Emergency Capex. If it is not reasonably practicable under the circumstances for Tenant to deliver any information or documentation relating to any such Emergency Capex that would otherwise be required to be included in an LO Capex Plan, then Tenant shall not be required to deliver the same to Landlord, provided that Tenant shall deliver any such information or documentation within thirty (30) days after completing such Emergency Capex. Nothing in this Section 8.3 shall prohibit (or give Landlord the right to approve) the continuation (in accordance with the applicable LO Capex Plan), during the Term, of any Material LO Capex Work that Tenant commenced (or caused to be commenced) prior to the applicable Landlord Option Exercise Date.

(e) Upon the LO Termination Date with respect to any Landlord Option Property, the cost of (i) all or any portion of any Material LO Capex Work approved by Landlord and (ii) all or any portion of any LO Capex Work (other than Material LO Capex Work), that, in each case, Tenant has completed in all material respects in accordance with the terms of this Lease and (in the case of any such Material LO Capex Work) the approved LO Capex Plan therefor (collectively, "**Apportioned LO Capex Costs**") shall be apportioned between Landlord and Tenant, with Landlord' s share ("**Landlord' s Share**") thereof equal to the total cost of all such LO Capex Work, multiplied by a fraction, the numerator of which shall be the then-remaining portion

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of the Amortization Period with respect to such LO Capex Work (prorated in the case of any partial years) and the denominator of which shall be the full Amortization Period. Notwithstanding anything to the contrary herein, in the event that Landlord disapproves all or any portion of any LO Capex Work pursuant to the applicable LO Capex Plan, Tenant shall still have the right to undertake such disapproved LO Capex Work (or the disapproved portion thereof) provided that (A) such LO Capex Work otherwise complies with the provisions of this Lease and (B) Tenant obtains Landlord' s consent thereto (if and to the extent such consent is required pursuant to Section 8.1); provided, however, that the cost of such LO Capex Work, or the applicable portion thereof that was disapproved by Landlord, as applicable, shall not be reimbursable to Tenant.

ARTICLE IX
TRANSFER

9.1 **Transfer; Subletting and Assignment**. Except as otherwise expressly provided in this Article IX, Tenant shall not, directly or indirectly, effect, suffer or permit (a) any Transfer with respect to Tenant' s interest in this Lease or the Demised Premises or (b) any Corporate Transaction with respect to Tenant or any Lease Guarantor without, in each case, Landlord' s prior written consent, which consent (i) to the extent that any such Transfer consists of a sublease (other than a Permitted Sublease), shall not be unreasonably withheld, conditioned or delayed, and (ii) with respect to any such Corporate Transaction or other Transfer (except to the extent that such Corporate Transaction or Transfer is otherwise expressly permitted under this Lease) may be granted or withheld in Landlord' s sole and absolute discretion. Notwithstanding anything to the contrary herein, in no event shall the following Transfers require Landlord' s consent or be subject to the provisions of this Article IX:

(A) any Transfer of Equity Interests, Merger or Division if (I) such transaction does not involve Tenant, any Lease Guarantor or any other Required Subsidiary, (II) such transaction does not result in a Change of Control, directly or indirectly, of any Tenant Party, and (III) either (x) such transaction does not result in a reduction of the Tangible Net Worth of the Lease Guarantors or (y) the Lease Guarantors will have a Tangible Net Worth, immediately following such transaction, that is equal to or greater than the Reference Net Worth; provided, however, that (aa) if such transaction involves the Transfer of direct or indirect Equity Interests in Tenant of twenty percent (20%) or less and such Transfer does not result in a Change of Control, directly or indirectly, of any Tenant Party, then Landlord' s consent to such transaction shall not be required and Tenant shall not be required to deliver to Landlord any Notice of such transaction and (bb) if such transaction involves the Transfer of direct or indirect Equity Interests in Tenant of more than twenty percent (20%), then not more than thirty (30) days after such transaction Tenant shall deliver to Landlord a certification of the percentage interest transferred and that (AA) the Tangible Net Worth of the Lease Guarantors immediately following such transaction is equal to or greater than the Reference Net Worth or (BB) such Transfer of direct or indirect Equity Interests in Tenant did not result in a reduction in the Tangible Net Worth of the Lease Guarantors;

(B) any initial public offering of Equity Interests pursuant to an effective registration statement or any Transfer of Equity Interests in a public company whose Equity Interests are (or will be, following such initial public offering) traded on a nationally or internationally recognized exchange or nationally or internationally recognized over the counter market;

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(C) any Corporate Transaction as to which Simon (and/or any of its Affiliates) and/or Brookfield (and/or any of its Affiliates) is the Transferee;

(D) any Transfer of direct or indirect Equity Interests in, or a Corporate Transaction at or above the level of, Simon Property Group, L.P. (or any of its successors);

(E) any Transfer of direct or indirect Equity Interests in, or a Corporate Transaction at or above the level of, Brookfield (or any of its successors); or

(F) any Corporate Transaction which results in a Change of Control of any or all of the Tenant Parties so long as, upon the consummation of such Corporate Transaction, the Lease Guarantors shall have a Tangible Net Worth that is equal to or greater than the Reference Net Worth.

Any assignment, subletting, Corporate Transaction or other Transfer in violation of this Article IX shall be void *ab initio* and of no force or effect. Tenant acknowledges and agrees that the restrictions on Transfers set forth in this Article IX are reasonable, have been specifically negotiated and bargained for between the Parties and are a material inducement to Landlord entering into this Lease without which Landlord would not enter into this Lease. The Parties acknowledge and agree that Permitted Licenses shall not (and shall not be deemed to) constitute subleases.

9.2 **Permitted Subletting**.

(a) Notwithstanding anything to the contrary in this Article IX, the following shall not require the consent of Landlord: (i) licenses, concessions or store-within-a-store arrangements with or to third-party retailers, concessionaires or licensees that operate wholly within or as part of the applicable Store with respect to any Demised Premises and not separately or apart from Tenant' s operations at such Store, provided that such licenses, concessions or store-within-a-store arrangements do not violate or conflict with any applicable Property Requirements and are in all cases in compliance with the Permitted Use (collectively, "**Permitted Licenses**"); and/or (ii) subleases of space in the Demised Premises to (A) any Affiliate of Tenant so long as such subleases are not designed to circumvent the provisions of this Article IX or Landlord' s consent or approval rights hereunder (collectively, "**Affiliate Subleases**"), or (B) any other Person (collectively, "**Third Party Subleases**"), provided that the premises demised under any such Third Party Subleases do not in the aggregate comprise more than fifteen percent (15%) of the Gross Leasable Square Footage of the Properties subject to this Lease as of the Commencement Date (i.e., such fifteen percent (15%) limit is not calculated on a Property-by-Property basis) (collectively, "**No-Consent Subleases**"; such 15% limit under this Section 9.2(a)(ii), as the same may be adjusted pursuant to the provisions of Section 1.9, the "**No-Consent Sublease Basket**"; and Affiliate Subleases and No-Consent Subleases, collectively, "**Permitted Subleases**"). Landlord hereby consents to the TBA Leases and acknowledges and agrees that the TBA Leases shall not constitute No-Consent Subleases and shall not be counted toward the No-Consent Sublease Basket.

(b) Notwithstanding anything to the contrary in this Section 9.2, provided that Tenant enters into such sublease prior to the date on which Landlord delivers to Tenant a Lease Severance Notice with respect to such Property and such sublease otherwise complies with the provisions of Section 9.4, the No-Consent Sublease Basket shall not apply to any sublease of any Baybrook/Coral Ridge Property and any such sublease shall not count toward or reduce the No-Consent

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Sublease Basket. With respect to any sublease: (i) if Landlord' s consent is required or otherwise being requested, not less than fifteen (15) Business Days prior to entering into such proposed sublease, Tenant shall provide Landlord advance written Notice of such proposed sublease, which Notice shall include a description of the portion(s) of the Demised Premises that will be demised by such sublease, the proposed subtenant, and a copy of such proposed sublease; (ii) if such sublease is a Permitted Sublease and Landlord' s consent is not required or otherwise being requested, not less than five (5) Business Days prior to entering into such proposed sublease, Tenant shall provide Landlord advance written Notice of such proposed sublease, which Notice shall specify whether such proposed sublease is an Affiliate Sublease and include a description of the portion(s) of the Demised Premises that will be demised by such sublease, the proposed subtenant, and, upon Landlord' s request, a copy of such proposed sublease; (iii) any such sublease shall not extend beyond the then current Term minus one (1) day and shall further comply with the applicable terms and conditions set forth in Section 9.4; and (iv) if such sublease is not an Affiliate Sublease and Tenant has not specified in its Notice to Landlord that Tenant is electing to treat such sublease as a No-Consent Sublease (in which case Tenant shall be deemed to have elected to be seeking Landlord' s consent thereto), and Landlord reasonably withholds its consent thereto, then (A) for any such subleases demising up to an aggregate of one hundred thousand (100,000) Gross Leasable Square Feet ("**Permitted Second Chance Subleases**"), Tenant may elect in its discretion to immediately treat such Permitted Second Chance Subleases as No-Consent Subleases and (B) for any such subleases that are not Permitted Second Chance Subleases (i.e., after the one hundred thousand (100,000) Gross Leasable Square Foot limitation has been met) Tenant may not (without prejudicing Tenant' s right to re-submit such sublease for approval if the reason for Landlord' s denial of consent has, in Landlord' s reasonable judgment, been rectified) treat any such proposed sublease (or any other sublease for the applicable Demised Premises, with the same proposed subtenant or any of its Affiliates) as a No-Consent Sublease for a period of ninety (90) days from and after Tenant' s delivery of its initial Notice to Landlord (the "**Second Chance Sublease Waiting Period**"). Within forty-five (45) days following the end of each fiscal quarter during the Term, Tenant shall, whether or not Landlord' s consent is required, provide Landlord (1) Notice (excluding, for this purpose, Notice to Landlord' s legal counsel) of all then-existing Permitted Subleases and the portions of the Demised Premises relating thereto (collectively, the "**Permitted Sublease Reports**") and (2) a copy of each executed sublease during such fiscal quarter.

(c) Tenant hereby represents and warrants to Landlord that (i) effective as of the Commencement Date, Tenant has entered into an Affiliate Sublease for the subleasing of the entirety of the Demised Premises to Penney OpCo LLC, a Virginia limited liability company (the "**Master Subtenant**" and such Affiliate Sublease, the "**Master Affiliate Sublease**"), and (ii) Tenant has delivered to Landlord a true and correct copy of the executed Master Affiliate Sublease as of the Commencement Date. Without limiting anything in Section 9.4, Tenant acknowledges, covenants and agrees that, with respect to the Master Affiliate Sublease, or, if applicable, any other Affiliate Sublease (collectively, together with any amendment, modification, supplement, restatement or replacement thereof in accordance with this Section 9.2(c), "**Applicable Subleases**"): (A) such Applicable Subleases and the terms and provisions thereof shall be fully and automatically subject and subordinate to this Lease and the terms and provisions hereof such that, among other things, (I) all terms and conditions of this Lease regarding the use and occupancy of the Demised Premises and the subletting of any portion thereof shall be applicable to such Applicable Sublease, and (II) upon any termination of this Lease either in whole or with respect to the portion thereof covered by such Applicable Sublease (except to the extent otherwise expressly

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provided in Section 1.9 with respect to any Lease severance), such Applicable Sublease shall automatically terminate and be of no further force and effect; (B) the Applicable Sublease shall automatically terminate upon the acquisition of title to the equity in Tenant pledged to Landlord pursuant to the Pledge Agreement pursuant to a foreclosure of the lien of such pledge, an assignment in lieu of foreclosure or otherwise pursuant to the terms of the Pledge Agreement, (C) Tenant shall (and shall cause Master Subtenant and each applicable subtenant under an Affiliate Sublease to) from time to time, promptly following Landlord' s and/or any applicable Landlord Lender' s written request, execute and deliver to Landlord or such Landlord Lender, as applicable, subordination agreements in form and substance reasonably satisfactory to Landlord or such Landlord Lender, as applicable, providing for the subordination of such Applicable Subleases to any applicable Landlord Financing Documents (provided, however, that any such subordination agreement shall provide for the non-disturbance of the subtenant under such Applicable Sublease if (and on the same terms that) any applicable SNDA provides for the non-disturbance of Tenant hereunder); (D) in connection with any Applicable Sublease (or any amendment, restatement or replacement thereof), Tenant shall provide a copy of the Applicable Sublease to Landlord prior to execution thereof so that Landlord can confirm its compliance with the foregoing subordination provisions of this Section 9.2(c), and Tenant shall pay its own costs and expenses relating thereto and shall promptly reimburse Landlord for any Costs and Expenses Landlord incurs in reviewing such Applicable Sublease to confirm its compliance with the foregoing subordination provisions of this Section 9.2(c); (E) Landlord may deal directly with the Master Subtenant or its successor under any replacement Master Affiliate Sublease with respect to any request for consent or other matter under this Lease as if such subtenant were Tenant hereunder (and Tenant hereby authorizes Landlord to so deal directly with Master Subtenant); and (F) any sub-sublease (or any further subletting, directly or indirectly) of all or any portion of the premises demised by any Applicable Sublease or any assignment thereof to any Person that is not an Affiliate of Tenant shall require the consent of Landlord to the same extent as would be required with respect to any other sublease of the Demised Premises or assignment of this Lease by Tenant. Subject to the provisions of this Section 9.2(c), Landlord hereby acknowledges and agrees that the Master Affiliate Sublease is an Affiliate Sublease that is permitted under this Lease and, for so long as the Master Affiliate Sublease remains in full force and effect, (I) Landlord shall accept Notices (and Tenant hereby authorizes Landlord to so accept such Notices) from the Master Subtenant as if such Notices were received from Tenant and (II) the Master Subtenant shall have the right to exercise or perform (and Tenant hereby authorizes Landlord to accept such exercise and performance of) all rights and obligations of Tenant under this Lease upon and subject to all of the terms and conditions of this Lease, with the same force and effect as if such rights and obligations were exercised and performed by Tenant.

9.3 **Permitted Assignments and Corporate Transactions**.

(a) Notwithstanding anything to the contrary in this Article IX, Landlord' s consent shall not be required in connection with (but Tenant shall give Landlord not less than thirty (30) days' Notice of) a Corporate Transaction with respect to any Tenant or any Lease Guarantor so long as the applicable Transferee is, as of the closing of such Corporate Transaction, (A) an Affiliate of Tenant or any Lease Guarantor or (B) any other Person that (together with any Transfer Replacement Guarantors and any Continuing Guarantors) (i) has a Tangible Net Worth of not less than Five Hundred Million Dollars ($500,000,000) (the "**Reference Net Worth**") and (ii) provides, or causes one or more of its Affiliates that has a Tangible Net Worth at least equal to the

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Reference Net Worth (such Affiliates, "**Transfer Replacement Guarantors**") to provide, as of such closing, a Replacement Guaranty; provided, however, that if the Tangible Net Worth of any existing Lease Guarantors that will continue as Lease Guarantors following such Corporate Transaction ("**Continuing Guarantors**") equals or exceeds the Reference Net Worth as of the closing of such Corporate Transaction, then such Transferee shall have no obligation hereunder to deliver, or cause any of its Affiliates to deliver, any such Replacement Guaranty.

(b) Notwithstanding anything to the contrary in this Article IX, Landlord' s consent shall not be required in connection with any assignment of Tenant' s interest in this Lease (i) to the applicable Transferee or to a newly formed limited liability company that is wholly owned, directly or indirectly, by such Transferee upon the closing of any Corporate Transaction that is permitted under Section 9.3(a), or (ii) to any Affiliate of Tenant (which shall be a Special Purpose Entity) in connection with a bona fide transaction so long as such assignment is not designed to circumvent Landlord' s consent or approval rights hereunder (in each case of (i) and (ii), a "**Successor Tenant**"); provided, however, that, (A) not less than thirty (30) days prior to entering into any proposed assignment, Tenant shall provide Landlord advance written Notice of such proposed assignment, which Notice shall include a description of the proposed assignee and a draft, to the extent then available, of any instrument of assignment proposed to be entered into by Tenant and such assignee and (B) on the effective date of any such assignment, the Person directly owning one hundred percent (100%) of the Equity Interests in such Successor Tenant shall execute and deliver to Landlord a Replacement Pledge Agreement with respect to such Equity Interests. Within ten (10) Business Days after the effective date of any such assignment, Tenant or the applicable Successor Tenant shall deliver a fully executed copy thereof to Landlord. Tenant shall be released from all obligations and liabilities under this Lease that accrue from and after the date of any such assignment (excluding all Surviving Obligations), provided that the Successor Tenant assumes all obligations of Tenant accruing from and after the date of such assignment pursuant to documentation that is reasonably satisfactory to Landlord.

9.4 **Required Subletting Provisions**. Any sublease entered into after the Commencement Date shall expressly provide:

(a) that it shall be subject and subordinate to all of the terms and conditions of this Lease, including any Landlord Financing Documents to which this Lease may from time to time be subject and subordinate (taking into account any applicable non-disturbance or recognition provisions expressly set forth in any applicable Landlord Financing Documents or SNDA);

(b) that the use of the applicable Demised Premises (or the applicable portion thereof) shall not conflict with any applicable Property Requirements or any other terms of this Lease; and

(c) subject to the terms of any Subtenant SNDA that Landlord may enter into with the applicable subtenant in accordance with (and subject to) Section 9.5, (A) if the Lease shall expire or otherwise terminate for any reason with respect to such applicable Demised Premises before the expiration of such sublease, such sublease shall automatically terminate without further notice or action of any kind and the subtenant under such sublease shall immediately surrender possession of the subleased premises to Landlord or as directed by Landlord in accordance with the terms of this Lease, and (B) if such subtenant receives a written notice from Landlord stating

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that this Lease has been terminated with respect to the applicable Demised Premises, such subtenant shall thereafter attorn to Landlord, whereupon such sublease shall continue as a direct lease between such subtenant and Landlord upon all of the terms and conditions of such sublease.

9.5 **Subtenant SNDA**. If requested by Tenant pursuant to a Notice delivered to Landlord, provided that no Disabling Event then exists, Landlord shall enter into a subordination, non-disturbance and attornment agreement with any subtenant that is not an Affiliate of Tenant (a "**Subtenant SNDA**") if (a) such subtenant occupies or will occupy, pursuant to its sublease, Gross Leasable Square Footage of 50,000 or more and (b) Tenant has provided Landlord a copy of the applicable sublease. Any such Subtenant SNDA shall be in substantially the form and substance of **Exhibit F** attached hereto or otherwise in form and substance reasonably satisfactory to Landlord and the applicable subtenant. Tenant shall pay Landlord for its Costs and Expenses incurred in connection with the negotiation of any Subtenant SNDA, whether or not the same is executed, up to a maximum of Ten Thousand and No/100 Dollars ($10,000.00) per Subtenant SNDA.

9.6 **No Release of Tenant' s Obligations**. Neither any assignment of this Lease nor any sublease shall relieve Tenant of its obligation to pay the Rent and to perform all of its other obligations hereunder, except as expressly provided herein to the contrary. The liability of Tenant and any immediate and remote successor in interest of Tenant (by assignment or otherwise), and the due performance of the obligations of this Lease on Tenant' s part to be performed or observed, shall not in any way be discharged, excused, released or impaired by any (a) stipulation which extends the time within which an obligation under this Lease is to be performed, (b) waiver of the performance of an obligation required under this Lease that is not entered into for the benefit of Tenant or such successor, or (c) failure to enforce any of the obligations set forth in this Lease. For the avoidance of doubt, the Landlord Option and all obligations of Tenant with respect to any Landlord Option Property, and all obligations of Tenant in connection with the exercise of any Renewal Option, shall in each case continue to apply to Tenant with full force and effect and Tenant shall be fully liable with respect thereto.

9.7 **No Leasehold Mortgages; Acceptable Credit Facilities**. Tenant shall not have any right to mortgage, pledge (other than pursuant to any Pledge Agreement) or otherwise encumber its interest under this Lease or any sublease, and any such mortgage, pledge or encumbrance shall be void and of no force and effect. Notwithstanding anything to the contrary in this Lease, Tenant shall be permitted to collaterally assign Tenant' s right, title and interest in and to this Lease as part of any grant of a security interest in all or substantially all of Tenant' s assets in connection with an Acceptable Credit Facility. On the Commencement Date, Landlord is entering into a collateral access agreement in favor of the current Acceptable Credit Facility Lender in the form of Exhibit I attached hereto (the "**Pre-Approved Access Agreement Form**"). From time to time during the Term, promptly following Tenant' s written request, so long as no Disabling Event exists and at Tenant' s sole cost and expense, Landlord shall execute and deliver a collateral access agreement in favor of any other Acceptable Credit Facility Lender on the Pre-Approved Access Agreement Form or on such other form as may be reasonably acceptable to Landlord and such Acceptable Credit Facility Lender. Supplementing the foregoing, and as a condition precedent to the effectiveness of any Severed Lease pursuant to Section 1.9, (a) any such collateral access agreement then in effect with respect to the Severed Property or Severed Properties that will become subject to such Severed Lease shall be assigned to and assumed by the applicable Severed Landlord or (b) such Severed Landlord shall execute and deliver, on or prior to the applicable Lease Severance Date, to each

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applicable Acceptable Credit Facility Lender a new collateral access agreement substantially on the Pre-Approved Access Agreement Form or on such other form as may be reasonably acceptable to such Severed Landlord and Acceptable Credit Facility Lender.

9.8 **Structure Chart**. Landlord acknowledges that it received from Tenant a copy of Tenant' s Structure Chart prior to the Commencement Date. Tenant represents and warrants to Landlord that the Structure Chart attached hereto as **Exhibit G** is a true, complete and correct copy of the organizational structure of Tenant and the Lease Guarantors as of the Commencement Date. Without limiting anything in this Article IX, within fifteen (15) days following (a) any material modification to the Structure Chart (including, for the avoidance of doubt, any modification that (i) relates to any Corporate Transaction that is subject to the requirements set forth in Section 9.1 or (ii) reflects a change to the organizational structure of any Tenant Party (including, without limitation, the creation of a new Subsidiary thereof (other than a new Subsidiary of OPCO IP SPE or OPCO RE SPE) which shall then be required to become a Lease Guarantor)) or (b) Landlord' s written request (which shall not, so long as no Disabling Event exists, be given more than two (2) times in any Lease Year), Tenant shall promptly deliver to Landlord a copy of its then current Structure Chart, together with an Officer' s Certificate certifying that such updated Structure Chart is true, complete and correct as of the applicable date. If there are any material modifications to the Structure Chart, the updated Structure Chart delivered by Tenant in such Officer' s Certificate shall automatically replace the outdated Structure Chart, provided that (A) nothing in this Section 9.8 shall be construed to limit any of the restrictions on Transfer set forth in this Article IX and (B) no such modifications to the Structure Chart shall be deemed to constitute Landlord' s written consent to any modifications that require Landlord' s prior written consent pursuant to an express provision of this Lease.

ARTICLE X
MAINTENANCE AND COMMON AREAS

10.1 **Maintenance and Repair**.

(a) At all times during the Term, subject to the provisions of Article XII, Tenant shall (subject, with respect to any Tenant Option Property, to the further provisions of this Article X following a Partial Property Termination Date), at Tenant' s sole cost and expense, (i) maintain (without the prior written consent of Landlord) each Demised Premises, all Tenant' s Property with respect thereto, and all Common Areas that (A) are appurtenant to such Demised Premises, (B) are in Tenant' s exclusive control or (C) Tenant is required to maintain pursuant to any applicable Property Documents (collectively, "**Tenant Common Areas**"), in each case in good order, condition and repair (ordinary wear and tear excepted) with the standard of care and quality taking into account the age of such Demised Premises, and otherwise in compliance with all applicable Property Requirements and the Permitted Use, and (ii) promptly make all customary (consistent with past practice) or necessary capital repairs and replacements thereof and thereto of every kind and nature, including without limitation all Required Work, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, or arising by reason of Tenant' s use of the Demised Premises or such Tenant Common Areas, any prior use thereof or otherwise (but excluding any such repairs, replacements or other Work to the extent the same are required as a result of Landlord' s gross negligence or willful misconduct, any affirmative acts in connection with work performed by Landlord or any of Landlord' s Related Users to any Tenant Option

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Property after a Partial TO Termination, or the negligence of any of Landlord' s Related Users in or about any Tenant Option Property after a Partial TO Termination), in each case, subject to ordinary wear and tear and taking into account the age of the applicable Demised Premises. Notwithstanding the foregoing, from and after the Partial Property Termination Date with respect to any Tenant Option Property, (A) Landlord shall (and Tenant shall no longer be obligated to) make and conduct all reasonable or customary maintenance, repairs and replacements of the load-bearing walls, roofs and other structural components (except any Alterations installed by Tenant that are located wholly within the Tenant Retained Portion) of such Tenant Option Property and (B) Tenant shall reimburse Landlord, as Additional Rent and, at Landlord' s option, as part of Installment Expenses, for Tenant' s Proportionate Share of the cost of all such maintenance, repairs and replacements; provided, however, that to the extent that any such maintenance, repairs or replacements disproportionately benefits either Portion of such Tenant Option Property, the Parties shall cooperate in good faith to adjust Tenant' s Proportionate Share of such costs solely with respect thereto in order to equitably reflect the proportional benefit received by each of the applicable Landlord Retained Portion and the applicable Tenant Retained Portion as a result of the applicable Work. In the event that the Parties cannot agree on the appropriate adjustment, either Party shall have the right to submit the same to expedited arbitration in accordance with the provisions of Section 27.1. Notwithstanding anything to the contrary herein and for the avoidance of doubt, in no event shall Tenant be in default of its obligations under this Section 10.1(a) solely as a result of its failure to perform any Required Work if Landlord' s consent is required with respect to such Work and Landlord unreasonably withholds such consent.

(b) Except as otherwise expressly required elsewhere in this Lease to the contrary, Landlord shall not under any circumstances be required to (i) build or rebuild any improvements with respect to any Demised Premises, (ii) maintain or make any repairs, Alterations, replacements or restorations of any nature of or to the Demised Premises, whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen, or (iii) to incur any costs or expenses in connection therewith. Except as otherwise expressly required elsewhere in this Lease, Tenant hereby unconditionally waives any rights Tenant may have pursuant to any applicable Legal Requirements in effect on the Commencement Date or hereafter enacted to make any repairs, Alterations, replacements or restorations, or to perform any maintenance, at the expense of Landlord.

10.2 **Additional Provisions with respect to the Common Areas**.

(a) From and after the Partial Property Termination Date with respect to any Tenant Option Property:

(i) Tenant and its permitted Related Users shall have a nonexclusive right and license to use the Common Areas with respect to such Tenant Option Property in common with Landlord and Landlord' s Related Users, subject to the provisions of this Lease and all applicable Property Requirements.

(ii) Except to the extent that such Common Areas solely serve the Tenant Retained Portion thereof or to the extent Tenant otherwise remains solely responsible therefor pursuant to any separate agreement with Landlord or applicable Property Documents, and subject to Tenant' s obligation to reimburse Landlord for Tenant' s

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Proportionate Share of the cost thereof in accordance with the terms of this Lease and any applicable TO Cost Sharing Agreements, Landlord shall promptly operate, maintain and repair (or cause to be promptly operated, maintained and repaired) such Common Areas appurtenant to or located wholly within such Tenant Option Property in such a manner as Landlord, in its reasonable discretion, shall determine so as to meet the maintenance and repair standard required of Tenant in accordance with Section 10.1 or as shall otherwise be necessary in order to cause the Demised Premises to be in compliance with applicable Property Requirements, provided that any such operation, maintenance or repair shall not interfere with Tenant' s use or enjoyment of the Tenant Retained Portion or the Common Areas of or with respect to such Tenant Option Property.

(iii) Tenant' s use of such Common Areas shall be subject to all applicable Property Requirements, and to the rights (if any) of any Persons in accordance with such Property Requirements to reconfigure or alter such Common Areas at any time and from time to time and to such rules and regulations that the Parties (acting in good faith) may agree upon with respect thereto in accordance with the provisions of Section 1.6(b).

(iv) Without limiting Landlord' s rights or remedies hereunder upon an Event of Default with respect to the applicable Property, neither Party shall do, or permit to be done, any act in, on or about such Common Areas not otherwise expressly permitted hereunder or under any applicable Property Documents that would interfere with the use or enjoyment thereof or of such Tenant Option Property (or any adjacent Shopping Center or third-party owner' s property) by the other Party and its respective Related Users.

(b) Tenant acknowledges and agrees that any walls now or hereafter separating any Demised Premises from any other property (including, from and after the Partial Property Termination Date with respect to any Tenant Option Property, the Landlord Retained Portion thereof) are party walls to be shared by Tenant with Landlord and any other tenants and/or occupants (if any) of the buildings in which such Demised Premises is located. Tenant hereby grants to Landlord, and to such other tenants and occupants (if any), and such Persons hereby accept and retain, the nonexclusive right to use such walls for all purposes for which they may be intended, or to such use by Landlord as may be desirable and/or convenient, including, without limitation, for any utilities, maintenance or fixtures so long as the same do not interfere with Tenant' s (or its permitted assignees, subtenants' or licensees') use or enjoyment of the Tenant Retained Portion or the Common Areas.

(c) If and to the extent that, with respect to any Demised Premises, any alarm system exists as of the Commencement Date or Tenant installs any such alarm system following the Commencement Date, Tenant shall, at Tenant' s sole expense, install, operate, maintain, repair and replace (as applicable) in working condition and repair such alarm system. With respect to any alarm system installed following the Commencement Date, Tenant shall be solely responsible for connecting such alarm system with Tenant' s own electrical systems and shall not in any way connect, tie into or otherwise append such alarm system to the alarm system for any other property (including, from and after the Partial Property Termination Date with respect to any Tenant Option Property, the Landlord Retained Portion thereof).

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ARTICLE XI
INSURANCE

11.1 **General Insurance Requirements**. Tenant shall obtain, pay for and maintain at all times during the Term, subject to Sections 11.2 and 11.4(a), the following insurance with respect to the Demised Premises and all property located therein or thereon, including Tenant' s Property:

(a) Insurance against all risk of physical loss or damage to the Leased Improvements and Fixtures as provided under "Special Causes of Loss" form coverage ("**All-Risk Insurance**"), including the perils of hail, windstorm, flood coverage (which coverage shall apply to all Properties without exclusions for Properties located in special flood hazard areas), earthquake and acts of terrorism, in amounts not less than the actual replacement cost of the Leased Improvements, Fixtures and Tenant' s Property without deduction for depreciation and waiving all co-insurance provisions or to be written on a no co-insurance form, which coverage may be fulfilled by a loss limit provided it otherwise meets the requirements herein. Such policy or policies shall contain limits for loss or damage caused by water, sprinkler leakage, debris removal, flood (including back-up of sewers and drains, seepage and surface water), subsidence, earthquake (including tsunami, if applicable), ordinance or law, and demolition and other commercially available coverages with amounts and terms determined by Tenant and reasonably acceptable to Landlord from time to time. If Tenant' s insurance company is unable or unwilling, or if Tenant otherwise elects, to include any or all of such excluded perils, then Tenant shall have the option of purchasing coverage against such perils from another insurer on a "Difference in Conditions" form or through one or more stand-alone policies. Such policies shall contain replacement cost and "Law and Ordinance" coverage (at full replacement cost) and joint loss agreements, and such policies shall not contain a "same or adjacent site clause" within the definition of replacement cost. Subject to Section 11.2, such policies and endorsements shall contain deductibles not more than Two Hundred Fifty Thousand Dollars ($250,000) per occurrence, with the exceptions of windstorm, hail, flood or earthquake (including tsunami, if applicable), which may have deductibles not more than five percent (5%) of the total insurable value of the individual Demised Premises or such other amount as approved by Landlord in its reasonable discretion.

(b) Comprehensive boiler and machinery/equipment breakdown insurance on any of the Fixtures or any other equipment on or in the Demised Premises, with a policy limit in an amount not less than the full replacement cost of the Leased Improvements per accident for damage to property, which coverage may be fulfilled by a loss limit provided it otherwise meets the requirements herein (and which may be carried as part of the coverage required pursuant to clause (a) above or pursuant to separate policies or endorsements);

(c) Solely to the extent required by Landlord, and subject to the further provisions of this clause (c), rental value insurance (a "**BI Policy**") in an amount not less than eighteen (18) months (or such shorter term as Landlord shall elect in its sole discretion) of Base Rent payable hereunder, with an extended period of indemnity coverage of at least three hundred sixty-five (365) days necessitated by the occurrence of any of the hazards described in Section 11.1(a) or 11.1(b). Upon Notice from Landlord to Tenant that Landlord would like Tenant to obtain competitive quotes (each, a "**BI Policy Quote**" and collectively, the "**BI Policy Quotes**") for a BI Policy (with Landlord specifying in *such* Notice the desired number of months of coverage) and the provision of required information requested by any insurer or insurance agent

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in order for Tenant to obtain such quotes (to the extent such information is not available to Tenant), each of Landlord and Tenant shall use commercially reasonable efforts to deliver to the other Party not less than one (1) BI Policy Quote each (and any documentation, reasonably satisfactory to the other party, that evidences the pursuit of such quotes) for such BI Policy within fifteen (15) days of such Notice. Upon delivery of the BI Policy Quotes, Landlord shall, in its sole discretion, either (i) require Tenant to procure the BI Policy with the lower or lowest of the premiums among the BI Policy Quotes; provided, however, that the Parties acknowledge and agree that Tenant shall not be required to procure a BI Policy if obtaining such BI Policy will increase the cost of any other insurance coverages that Tenant' s Parent and/or any of its Subsidiaries are then maintaining for their properties (unless Landlord agrees to be solely responsible for such increased costs, with Tenant having the right to credit the same against installments of Base Rent coming due and payable hereunder if Landlord does not pay or reimburse Tenant for the same within ten (10) Business Days after Tenant' s request therefor, accompanied by reasonable supporting documentation), (ii) obtain and maintain its own BI Policy or (iii) elect not to obtain a BI Policy. Notwithstanding anything to the contrary herein, Tenant' s allocable share of the premium cost of any and all BI Policies shall not exceed Three Hundred Thousand Dollars ($300,000) per year in the aggregate (the "**BI Premium Cap**") (as such amount may be re-allocated to Severed Leases pursuant to the provisions of Section 1.9(d)(K) of this Lease) regardless of whether Landlord or Tenant obtains and maintains the BI Policy, and Tenant' s obligation to pay or reimburse Landlord for the cost thereof shall be limited to the BI Premium Cap (as such amount may be re-allocated to Severed Leases pursuant to the provisions of Section 1.9(d)(K) of this Lease), with Landlord bearing sole responsibility for the remainder of the annual premium cost for such BI Policy above the BI Premium Cap (each Party' s share of such cost, as such share may be re-allocated pursuant to the provisions of Section 1.9(d)(K) of this Lease, its "**BI Share**"). The Net Proceeds of any BI Policy shall be prorated between Tenant and Landlord (as such proration may be further re-allocated pursuant to the provisions of Section 1.9(d)(K) of this Lease) such that Tenant shall receive a credit against Base Rent coming due and payable hereunder equal to the product of (i) such Net Proceeds, multiplied by (ii) Tenant' s pro rata share of the annual cost of the BI Policy (as such proration may be further adjusted pursuant to the provisions of Section 1.9(d)(K) of this Lease);

(d) Claims for personal injury or property damage under a policy of comprehensive general liability insurance, including coverage for acts of terrorism, with (1) limits of not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) in the annual aggregate and with a retention or deductible not in excess of Two Hundred Fifty Thousand Dollars ($250,000) (subject to the provisions of Section 11.2), plus (2) at least Fifty Million Dollars ($50,000,000) excess and/or umbrella liability insurance shall be obtained and maintained on terms consistent with the commercial general liability insurance required above. In addition, to the extent that Landlord maintains any policy(ies) of comprehensive general public liability insurance with respect to the Common Areas relating to any Tenant Option Property, Landlord shall name Tenant as an additional insured on each such policy as to all matters arising with respect to such Common Areas from and after the Partial Property Termination Date (if any) with respect to such Tenant Option Property. The coverage under each such policy shall be on a primary and non-contributory basis;

(e) Workers' compensation insurance evidenced by Tenant on a per-state basis (with respect to the state in which each Demised Premises is located) and by a certificate of insurance on a "statutory basis" with minimum limits of "employers' liability" coverage of Five Hundred Thousand Dollars ($500,000) per occurrence;

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(f) Motor vehicle liability insurance with coverage for all owned, non-owned and hired vehicles with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence for bodily injury and property damage. If no vehicles are owned or leased, the commercial general liability insurance shall be extended to provide insurance for non-owned and hired vehicles;

(g) During such time as Tenant is performing (or causing to be performed) any Work, (i) workers' compensation insurance (if required by law) and employers' liability insurance covering all Persons employed in connection with such Work in statutory limits, (ii) a completed operations endorsement to the commercial general liability insurance policy referred to above, (iii) builder' s risk insurance, completed value form (or its equivalent), covering all physical loss, in an amount and subject to policy conditions reasonably satisfactory to Landlord, and (iv) such other insurance (including amounts of coverage, deductibles and/or form of mortgagee clause) as Landlord deems reasonably necessary to protect Landlord' s interest in the Demised Premises from any act or omission of Tenant' s contractors or subcontractors; and

(h) Such other insurance (or other terms with respect to any insurance required pursuant to this Section 11.1, including amounts of coverage, deductibles and/or form of mortgagee clause) on or in connection with the Demised Premises as Landlord may reasonably require and that is (i) customarily carried or required by prudent "triple-net" tenants for comparable properties in the area of the applicable Demised Premises and (ii) available on commercially reasonable terms (as agreed to between the Parties).

Subject to the provisions of Article XII, by this Section 11.1, Tenant intends that the risk of loss or damage to each and every Demised Premises and all property thereon, including all Leased Improvements, Fixtures and Tenant' s Property, shall be borne solely by Tenant and its respective property insurance carriers and Tenant hereby agrees to look solely to, and to seek recovery only from such carriers, in the event of any such loss or damage to the extent that such coverage is agreed to be provided hereunder. For this purpose, any applicable deductible shall be treated as though it were recoverable under such policies.

11.2 **Landlord' s Insurance**. From and after the Partial Property Termination Date with respect to any Tenant Option Property, subject to Tenant' s obligation to pay to or reimburse Landlord for Tenant' s Proportionate Share of the costs and expenses incurred by Landlord in connection therewith ("**Landlord' s Insurance Costs**") pursuant to the terms of this Lease, Landlord shall obtain and maintain (or cause to be obtained and maintained) All-Risk Insurance with respect to such Tenant Option Property (it being agreed that from and after the date that Landlord obtains such insurance, Tenant shall no longer be obligated to maintain the same). Notwithstanding anything to the contrary in this Lease, to the extent that, prior to the Commencement Date, Tenant' s Predecessor maintained deductibles with respect to any property or liability insurance coverage required to be obtained and maintained by Tenant hereunder that are higher than the maximum deductibles expressly set forth in Section 11.1, Tenant shall (subject to the succeeding proviso) be expressly permitted (without the same constituting an default or Event of Default hereunder) to maintain insurance coverage with deductibles equal to or less than such

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historical amounts; provided, however, that in no event may any such deductible exceed two percent (2%) of the then current Tangible Net Worth of the Lease Guarantors. In the event that Tenant maintains insurance coverage with deductibles that exceed the maximum deductible amounts set forth in Section 11.1 above (such excess amounts, the "**Excess Deductible Amounts**"), Landlord may (but shall not be obligated to) obtain at its expense so-called "buy-down" insurance coverage or other similar insurance coverage having the effect of reducing the deductibles then maintained by Tenant to the level of any applicable maximum deductible set forth in Section 11.1 above. If any insurance proceeds are paid pursuant to any "buy-down" insurance coverage or other similar insurance coverage maintained by Landlord, then Landlord shall be exclusively entitled to receive and retain such proceeds for its own account and shall have no obligation to pay over, or make available to Tenant, such proceeds in connection with a restoration of the affected Property or otherwise.

11.3 **Waiver of Subrogation**. To the extent commercially available from time to time, all insurance policies carried by either Party with respect to the Demised Premises or Tenant' s Property, including, without limitation, All-Risk Insurance and liability insurance, shall contain an express waiver of any right of subrogation on the part of the insurer against the other Party. Each Party shall pay any additional costs or charges necessary to obtain such waiver.

11.4 **Policy Requirements**.

(a) Tenant shall maintain each element of insurance described in this Article XI with respect to the Demised Premises and Tenant' s Property (as applicable) in the amounts of insurance described above and otherwise in accordance with all applicable Insurance Requirements.

(b) Tenant shall pay directly to the applicable insurance companies (or, with respect to any Landlord' s Insurance Costs, shall pay to or reimburse Landlord for Tenant' s Proportionate Share thereof) all premiums for and other costs and expenses necessary to obtain and maintain the insurance required under this Article XI (collectively, "**Insurance Costs**") as the same become due and payable.

(c) All insurance required to be maintained by Tenant under this Article XI shall be written by companies permitted to conduct business in each applicable State (provided, however, that the foregoing shall not require all such companies to be admitted in an applicable State). All such policies of insurance shall be written in a form reasonably satisfactory to Landlord and issued by insurance companies with a minimum policyholder rating of not less than "A-" and a financial rating of "VIII" in the most recent version of Best' s Key Rating Guide (the "**Best Insurer Rating**"). If and to the extent that Landlord elects to have any policies of insurance required to be maintained by Tenant under this Article XI with respect to any Property be issued by insurance companies with both the above-required Best Insurer Rating and a rating from S&P (an "**S&P Insurer Rating**"), then Landlord may elect, at its option, to require Tenant to replace such policies with policies issued by insurance companies that have an S&P Insurer Rating of not less than "A-" (the "**S&P Insurer Minimum Rating**"). In the event that Landlord makes such election, and the cost of obtaining such policies from (and/or maintaining such policies with) insurance companies with the S&P Insurer Minimum Rating exceed the cost of obtaining such policies from (and/or maintaining such policies with) insurance companies with the Best Insurer

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Rating (taking into account any deductible paid under any existing policy for which Tenant will not receive credit under a corresponding replacement policy), then Landlord shall be responsible for such excess cost. Notwithstanding the foregoing, (i) Tenant shall not be required to obtain such policies from (or maintain such policies with) insurance companies with the S&P Insurer Rating and the Best Insurer Rating if doing so will increase the cost of any other insurance coverages that Tenant' s Parent and/or any of its Subsidiaries are then maintaining for their properties (unless Landlord agrees to be solely responsible for such increased costs, with Tenant having the right to credit the same against installments of Base Rent coming due and payable hereunder if Landlord does not pay or reimburse Tenant for the same within ten (10) Business Days after Tenant' s request therefor, accompanied by reasonable supporting documentation) and (ii) Landlord may elect, prior to Tenant obtaining the applicable insurance policy(ies) referred to in this clause (c), to obtain any applicable insurance under this clause (c) on its own and at its own cost and expense. In the event that Landlord seeks to obtain any "wrap" policy of insurance that increases any applicable minimum policyholder rating from S&P or that gives the applicable insurer an S&P rating, then Tenant shall provide any information requested by the applicable insurer or insurance agent that is required in order for Landlord to obtain such "wrap" policy (to the extent that such information is not already available to Landlord).

(d) All liability insurance policies shall include Landlord (in addition to any Landlord Lender required pursuant to Section 11.4(e) below) as an "additional insured" thereunder. All property insurance policies shall include Landlord as a "loss payee" thereunder for its interest in each Demised Premises. In addition, Landlord shall include Tenant (and, if applicable, its lenders) as an "additional insured" on each All-Risk Insurance policy as to all matters arising from and after the Partial Property Termination Date (if any) with respect to a Tenant Option Property.

(e) All policies required to be maintained by Tenant under this Article XI shall, as appropriate, name as an "additional insured" and/or a "loss payee," each applicable Landlord Lender by way of a standard form of mortgagee' s loss payable endorsement. The All-Risk Insurance required under Section 11.1(a) shall provide thirty (30) days' prior written notice to Landlord and any applicable Landlord Lender of cancellation (or ten (10) days' prior written notice to Landlord and any applicable Landlord Lender for any non-payment of premium). Tenant shall promptly deliver to Landlord certificates of insurance evidencing the insurance required hereunder.

(f) Notwithstanding anything to the contrary herein, if any of the requirements or coverages set forth in Section 11.1 becomes unavailable on commercially reasonable terms, then, upon Tenant' s request, Landlord and Tenant shall negotiate in good faith to reasonably agree upon alternative requirements or coverages which are then available in the marketplace on commercially reasonable terms.

11.5 **Blanket Policy**. Notwithstanding anything to the contrary contained in this Article XI, Tenant' s obligations to carry the liability insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that such blanket policy or policies otherwise satisfy the requirements of this Article XI. Tenant shall promptly deliver to Landlord certificates of insurance evidencing such blanket policy or policies.

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11.6 **No Separate Insurance**. Tenant shall not, on Tenant' s own initiative or pursuant to the request or requirement of any third party, (a) take out separate insurance concurrent in form with or contributing to the insurance required under this Article XI to be furnished by Tenant or (b) increase the amounts of any then-existing insurance by securing an additional insurance policy or policies, unless all parties having an insurable interest in the subject matter of the applicable insurance coverage, including in all cases Landlord and all applicable Landlord Lenders, are included therein as additional insureds and/or loss payees (as applicable) and the loss is payable under such insurance policy or policies in the same manner as losses are payable under this Lease. Tenant shall promptly notify Landlord of any such separate insurance and shall promptly deliver to Landlord certificates of insurance evidencing such coverage.

ARTICLE XII
CASUALTY AND CONDEMNATION

12.1 **Casualty; Property Insurance Proceeds**.

(a) Tenant shall promptly give Landlord Notice of the occurrence of any Casualty for which the loss would reasonably be expected to exceed Two Hundred Fifty Thousand Dollars ($250,000). Except as otherwise provided in Section 12.2(b), following any Casualty, the Net Proceeds with respect thereto shall be paid, held and applied as follows: (x) first, so long as no Disabling Event then exists, the first Five Million Dollars ($5,000,000) (the "**Restoration Threshold**") (or, if the amount of the Net Proceeds is less than the Restoration Threshold, the full amount thereof) shall be paid to Tenant, and (y) second, any remaining Net Proceeds shall be paid into an escrow account held by a nationally recognized Title Company or another nationally recognized institutional third party depository selected by Landlord and reasonably approved by Tenant (the "**Restoration Escrow Agent**") pursuant to an escrow agreement (the "**Restoration Escrow Agreement**") consistent with the terms of this Section 12.1 and otherwise reasonably acceptable to the Parties. Tenant acknowledges that Landlord shall have the right to collaterally assign Landlord' s interest in any such Restoration Escrow Agreement to any applicable Landlord Lender, and shall, promptly following Landlord' s written request, acknowledge and agree to any such collateral assignment pursuant to documentation in form and substance reasonably acceptable to the Parties; provided, however, that, so long as no Disabling Event then exists, the consent or approval of such Landlord Lender shall not be required for any Disbursement Request that complies with the provisions of this Section 12.1. Any such Restoration Escrow Agreement shall provide for the disbursement by the Restoration Escrow Agent of the Net Proceeds held by it to Tenant in installments as restoration of the affected Demised Premises progresses promptly following Tenant' s written request therefor (a "**Disbursement Request**"), subject to the following disbursement conditions (the "**Restoration Conditions**"):

(i) no Disabling Event then exists as of the date of the Disbursement Request or the date of the applicable disbursement;

(ii) (A) Landlord shall have approved (which approval shall not be unreasonably withheld, conditioned or delayed, and shall be subject to the Deemed Approval Procedure) the plans and specifications for the restoration work; and (B) Tenant shall have provided Landlord with (I) a list of the architects, engineers, contractors (but not any subcontractors) and other construction professionals (collectively, the "**Construction**

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Professionals") selected by Tenant to perform such restoration work and (II) evidence reasonably satisfactory to Landlord that such restoration work will, once completed in accordance with the approved plans and specifications, comply in all material respects with all Legal Requirements;

(iii) if the Guarantor Financial Covenants are not then satisfied, the Net Proceeds shall be sufficient to perform the restoration work or, if not, Tenant shall have provided Landlord with reasonable assurances that sufficient funds will be available from Tenant (or Lease Guarantors) to pay such deficiency;

(iv) on the date of the applicable Disbursement Request, no mechanics' or materialmen' s liens, stay orders or notices of pendency shall have been filed against the affected Demised Premises, except to the extent that Tenant shall have Bonded the same in accordance with this Agreement;

(v) such disbursements shall not be made more frequently than once per calendar month;

(vi) the Restoration Escrow Agent shall retain ten percent (10%) of the aggregate amount of the Net Proceeds held by it from time to time until the final draw request;

(vii) with each draw request, Tenant shall have delivered to the Restoration Escrow Agent (A) a certification by the applicable architect that such restoration work that is the subject of the applicable disbursement has been performed substantially in conformance with the approved plans and specifications and (B) lien waivers for all completed work that is the subject of such draw request; and

(viii) with respect to the final draw request, Tenant shall have delivered to the Restoration Escrow Agent (A) a certification by the applicable architect that such restoration work has been completed substantially in conformance with the plans and specifications and Legal Requirements and (B) final lien waivers for all work.

(b) All Net Proceeds paid to Tenant in accordance with the provisions of the Restoration Escrow Agreement and any other Net Proceeds paid to Tenant shall be used first for the restoration of the Demised Premises to substantially the same (or better) condition as existed immediately before the applicable Casualty and with materials and workmanship of like kind and quality and otherwise in accordance with the Construction Standards. Any excess Net Proceeds remaining after the completion of such restoration shall, so long as no Disabling Event then exists (in which event all such excess Net Proceeds shall be payable to Landlord), be (i) retained by Tenant if the total Net Proceeds with respect to the applicable Casualty do not exceed the Restoration Threshold or (ii) split equally between the Parties if such total Net Proceeds exceed the Restoration Threshold. All salvage resulting from any risk covered by insurance for damage or loss to the Demised Premises shall belong to Tenant. Provided that no Disabling Event then exists, subject to the last sentence of this Section 12.1(b), Tenant shall have the exclusive right, at its sole cost and expense, to adjust, collect and compromise insurance claims payable in connection with any Casualty, and to execute and deliver on behalf of Landlord all necessary proofs of loss, receipts, vouchers and releases required by the applicable insurers. Landlord agrees to sign, upon

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the reasonable request of Tenant, all such proofs of loss, receipts, vouchers and releases. Landlord shall have the right to join Tenant in any adjustment, collection or compromise of insurance claims payable in connection with any Casualty that exceeds the Restoration Threshold; provided, however, that so long as no Disabling Event exists, any such joinder and participation by Landlord shall be diligent, expeditious and in good faith.

(c) Notwithstanding anything to the contrary in this Lease, with respect to any Tenant Option Property as to which a Partial TO Termination has occurred, each Party shall promptly give the other Party Notice of the occurrence of any Casualty affecting its respective Portion. If any such Casualty occurs that affects the Landlord Retained Portion of such applicable Tenant Option Property, the Common Areas or such Tenant Option Property generally (excluding any Casualty that exclusively affects the interior of the Tenant Retained Portion thereof, as to which the provisions of Section 12.1(a) shall apply), then following such Casualty, unless Tenant terminates this Lease with respect to the applicable Demised Premises pursuant to Section 12.2, the net proceeds received by Landlord with respect thereto shall be paid to Landlord and Landlord shall use such net proceeds for the restoration of the applicable Landlord Retained Portion, the Common Areas or the Tenant Option Property generally, as applicable. All such net proceeds paid to Landlord in respect of a Tenant Option Property shall, unless Tenant terminates this Lease with respect to the applicable Demised Premises pursuant to Section 12.2, be used first for the restoration of the Landlord Retained Portion thereof, the Common Areas or the Tenant Option Property generally, as applicable, to substantially the same (or better) condition as existed immediately before the applicable Casualty and with materials and workmanship of like kind and quality and in accordance with the Construction Standards. Any excess proceeds of insurance remaining after the completion of such restoration shall be retained by Landlord. All salvage resulting from any risk covered by insurance for damage or loss to the Landlord Retained Portion, the Common Areas or the Tenant Option Property generally, as applicable, shall belong to Landlord. Landlord shall have the right to adjust, collect and compromise insurance claims payable in connection with any Casualty described in this Section 12.1(c) and shall execute and deliver all necessary proofs of loss, receipts, vouchers and releases required by the insurers. Tenant hereby agrees to sign, upon the request of Landlord, all such proofs of loss, receipts, vouchers and releases. Provided that no Disabling Event exists, Tenant hereby reserves the right to join Landlord in any such adjustment, collection or compromise of an insurance claim (at its sole cost and expense) solely to the extent that such claim relates to the Tenant Retained Portion of the applicable Tenant Option Property.

12.2 **Tenant' s and Landlord' s Obligations Following Casualty and Tenant' s Right to Terminate**. If any Demised Premises shall be damaged by any Casualty, whether or not such damage is covered by insurance required to be maintained herein, (a) regardless of whether any Net Proceeds are available or sufficient, Tenant shall promptly commence the restoration of the applicable Demised Premises in accordance with the Construction Standards and diligently pursue the completion of such restoration (and, if required under the terms of any applicable Restoration Escrow Agreement, the Restoration Conditions), and (b) such damage shall not give rise to any termination of this Lease; provided, however, that in the event of a Casualty that damages or destroys fifty percent (50%) or more of the Gross Leasable Square Footage of the Leased Improvements with respect to any Demised Premises and such Casualty either (i) occurs within twenty-four (24) months prior to the expiration of the then current Term (which, for purposes of this Section 12.2, shall include any Renewal Term as to which Tenant has exercised a Renewal

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Option, regardless of whether such Renewal Term has commenced) or (ii) occurs during any Renewal Term if and only if such Demised Premises then constitutes a Sub-Performing Property (in each case, a "**Major Casualty**"), then Tenant shall have the right, exercisable by delivering Notice to Landlord thereof (a "**Major Casualty Termination Notice**") by the earlier to occur of (x) the date that is one hundred eighty (180) days following the occurrence of such Major Casualty and (y) the date that is thirty (30) days following the date that the applicable insurance proceeds have been finally adjusted, to elect not to restore, and to terminate this Lease solely with respect to, the applicable Demised Premises affected by such Major Casualty, subject in each case to and on the terms and conditions set forth herein. A Major Casualty Termination Notice shall (x) set forth the date as of which this Lease shall terminate with respect to the affected Demised Premises, which shall not be later than one hundred eighty (180) days following Tenant' s delivery of such Major Casualty Termination Notice to Landlord (the "**Casualty Termination Date**") and (y) constitute a binding and irrevocable commitment of Tenant to pay the Casualty Termination Amount on such Casualty Termination Date.

(a) If Tenant is required to restore any Demised Premises affected by a Casualty under the terms of this Article XII and the cost of such restoration exceeds the amount of the Net Proceeds payable in connection with such Casualty, or if there are no such Net Proceeds, then in either such case, Tenant shall pay any excess amounts needed to complete such restoration.

(b) If Tenant elects not to restore any applicable Demised Premises following a Casualty in accordance with the express provisions of this Article XII, then the Net Proceeds (other than any portion thereof payable on account of Tenant' s Property) shall (subject to the provisions of any Landlord Mortgage) be retained by Landlord free and clear of any claim by or through Tenant.

(c) If Tenant delivers a Major Casualty Termination Notice following a Major Casualty with respect to any Demised Premises in accordance with Section 12.2, then, on the applicable Casualty Termination Date, (i) this Lease shall terminate solely with respect to such Demised Premises, (ii) Tenant shall surrender to Landlord such Demised Premises in accordance with the applicable terms and conditions of this Lease, (iii) such Demised Premises shall be automatically removed from this Lease and shall no longer be a part of the "Demised Premises" hereunder, (iv) all Rent shall be adjusted, and Tenant' s obligations hereunder with respect to such Demised Premises shall terminate, in each case in accordance with (and subject to) Section 1.10, (v) Tenant shall assign to Landlord all of Tenant' s right, title and interest in and to all insurance proceeds payable under its All-Risk Insurance in connection with the related Major Casualty, less Tenant' s Costs and Expenses incurred in connection therewith, and (vi) Tenant shall pay to Landlord the Casualty Termination Amount. As used herein, "**Casualty Termination Amount**" means, with respect to any Property that is subject to a Major Casualty, an amount equal to the Excess Deductible Amount with respect to the All-Risk Insurance then maintained by Tenant (without reduction for any proceeds that may be payable to Landlord for any "buy-down" or other similar policy then being maintained by Landlord at its expense in accordance with Sections 11.1 and 11.2).

(d) Notwithstanding anything to the contrary herein, after any Partial TO Termination with respect to a Tenant Option Property, if Tenant has not terminated this Lease with respect to the applicable Demised Premises and Landlord is required to restore such Tenant Option

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Property (or the applicable portion thereof, including any Common Areas) following a Casualty in accordance with the terms of this Article XII and the cost of such restoration exceeds the amount of the net proceeds payable in connection with such Casualty, or if there are no such net proceeds, then in either such case, and provided that no Disabling Event then exists, Landlord shall pay any excess amounts required to complete such restoration.

12.3 **Express Agreement**. The provisions of Sections 12.1 and 12.2 shall be deemed an express agreement governing any case of damage or destruction of any Demised Premises by Casualty, and Section 227 of the Real Property Law of the State of New York, providing for such a contingency in the absence of an express agreement, and any other law of like import, now or hereafter in force, shall have no application in such case.

12.4 **Condemnation**.

(a) Each of Landlord and Tenant shall promptly give the other Party Notice of any actual or threatened (in writing) Condemnation of which it becomes aware, and, to the extent that the other Party has not otherwise received the same, shall promptly deliver to such other Party copies of any and all documents served on or received by it in connection with such Condemnation.

(b) In the event that any Condemnation (other than a Temporary Condemnation) occurs with respect to (i) the entirety of any Demised Premises or (ii) any portion (but less than the entirety) of any Demised Premises or Property and such partial Condemnation results in (A) the Demised Premises becoming Unsuitable for its Intended Use or (B) a permanent and total loss of all or so much of the access to or from such Demised Premises or Property, or the parking therefor, so as to render the same inadequate for the operation of such Demised Premises on a commercially practicable basis (each, a "**Major Condemnation**"), then in either such case, at the option of Tenant, upon Notice to Landlord at any time prior to the date of such Major Condemnation, this Lease shall terminate solely with respect to such affected Demised Premises on the effective date of such Major Condemnation (the "**Condemnation Termination Date**").

(c) In the event that any Temporary Condemnation occurs with respect to any Demised Premises, this Lease shall continue in full force and effect and Tenant shall be entitled to receive the entire Net Award with respect thereto. Notwithstanding anything to the contrary herein, during the pendency of any such Temporary Condemnation, Tenant' s compliance with the terms of this Lease that relate to the affected Demised Premises shall be subject to the terms of any applicable Condemnation order or agreement with the applicable Governmental Authority and Tenant covenants that, following the date as of which any such Temporary Condemnation is no longer in effect, Tenant shall restore the applicable Demised Premises as nearly as may be reasonably possible to its condition, character and quality immediately prior to such Temporary Condemnation and otherwise in compliance with all applicable Property Requirements and the terms of this Lease, unless such period of temporary use or occupancy extends beyond the expiration of the Term, in which case Tenant shall not be required to make such restoration.

(d) In the event of any Major Condemnation, on the applicable Condemnation Termination Date, (i) this Lease shall terminate solely with respect to the affected Demised Premises, (ii) Tenant shall surrender to Landlord any portion of such Demised Premises that is not subject to such Condemnation in accordance with the applicable terms and conditions of this Lease,

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(iii) such Demised Premises shall be automatically removed from this Lease and shall no longer be a part of the "Demised Premises" hereunder and (iv) the Base Rent and applicable Property Charges shall be adjusted, and Tenant' s obligations hereunder with respect to such Demised Premises shall terminate, in each case in accordance with (and subject to) Section 1.10.

12.5 **Tenant' s Restoration Obligations; Net Awards**.

(a) If a Condemnation (other than a Temporary Condemnation, which shall be governed by Section 12.4(c)) occurs with respect to any Demised Premises and this Lease does not terminate with respect to such Demised Premises pursuant to Section 12.4(b):

(i) regardless of whether any Net Award in connection therewith is sufficient for such restoration, but subject to the following provisions of this Section 12.5, Tenant shall promptly proceed to restore the Demised Premises as nearly as possible to its condition, character and quality immediately prior to such Condemnation and otherwise in compliance with all applicable Property Requirements and the terms of this Lease; provided, however, that, prior to the commencement of such restoration, (A) Tenant shall obtain not fewer than three (3) written bids from reputable General Contractors with respect to such restoration and, promptly following its receipt of such bids, provide Landlord Notice thereof and copies of any material documents received by Tenant in connection therewith; (B) Tenant may select the bid and General Contractor of its choice, in each case, in its commercially reasonable judgment (provided, however, that such selection, together with the form and substance of the applicable construction agreement (the "**Approved Restoration Contract**") and any related material trade contracts shall be subject to Landlord' s approval, which shall not be unreasonably withheld, conditioned or delayed, and shall be subject to the Deemed Approval Procedure); and (C) the architects, engineers, and other Construction Professionals (other than the General Contractor), as well as the plans and specifications, shall have been reasonably approved by Landlord (with Tenant having the right to submit any such request for approval pursuant to the Deemed Approval Procedure). If Landlord withholds its approval of any agreement, contract, plans, specifications and/or Construction Professionals pursuant to this clause (i), then the Parties shall consult with each other in good faith until the Parties have reached agreement on the applicable matter;

(ii) the applicable Net Award shall be paid (A) first, so long as no Disabling Event then exists, that portion of the Net Award that does not exceed the Restoration Threshold shall be paid to Tenant and (B) second, any portion of such Net Award that does exceed the Restoration Threshold shall be paid to and held by a Restoration Escrow Agent pursuant to a Restoration Escrow Agreement, and disbursed to Tenant for restoration of the affected Demised Premises subject to the Restoration Conditions, in each case, in accordance with (and subject to) the terms of Section 12.1(a)(i) and (iii)-(viii) only; and

(iii) if, based on the Approved Restoration Contract and any related material trade contracts and other supporting documentation provided to Landlord, Tenant reasonably determines that the Net Award shall be insufficient to cover the total cost of the restoration of the Demised Premises, then Tenant shall, prior to the commencement of such

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restoration, deliver to Landlord an Officer' s Certificate pursuant to which Tenant shall certify to Landlord the estimated amount of such deficiency (the "**Deficiency Amount**") and, within thirty (30) days after the (A) substantial completion of the applicable restoration work and (B) receipt by Landlord of all paid invoices and lien waivers for such restoration work (the "**Restoration Substantial Completion Date**"), Landlord shall, so long as no Disabling Event then exists, pay to Tenant (or, if Landlord fails to make such payment within thirty (30) days after the Restoration Substantial Completion Date, provide to Tenant a credit against the Base Rent coming due from and after such Restoration Substantial Completion Date) in an amount equal to the lesser of (1) the Deficiency Amount and (2) the Costs and Expenses incurred by Tenant in excess of the Net Award to complete such work; provided, however, that in no event shall Landlord be required to pay or reimburse Tenant for any development or other fee payable to any Tenant Party or any Affiliate of a Tenant Party. Other than the reimbursement obligation expressly set forth in the immediately preceding sentence, Landlord shall have no obligations or liabilities with respect to any such restoration work, and for the avoidance of doubt, Tenant shall be solely responsible for any cost overruns or change orders that may accrue or become necessary in connection with such restoration work.

(b) So long as no Disabling Event then exists (in which event all such excess Net Award shall be payable to Landlord), subject to the provisions of Section 12.4(c), the remaining amount (if any) of any Net Award following Tenant' s restoration of any Demised Premises pursuant to Section 12.5(a), and the entire amount of any Net Award in the event of a termination of this Lease resulting from the applicable Condemnation pursuant to Section 12.4(b), shall in each case be allocated among and paid to the Parties as follows: (i) first, to Landlord in an amount equal to the fair market value of Landlord' s interest (which interest shall be valued subject to this Lease) in the portion of the Demised Premises so taken (exclusive of Permissible Alterations made by Tenant with Landlord' s consent (to the extent such consent was required hereunder) during the Term), as determined by the applicable Governmental Authority in connection with such Condemnation, or, if such amount is not separately determined by such Governmental Authority, as reasonably determined by the Parties on the basis of an MAI Appraisal prepared by a nationally recognized appraiser selected by Landlord and reasonably approved by Tenant; (ii) second, to Tenant in an amount equal to the sum of (x) the fair market value of Tenant' s leasehold estate in such portion of the Demised Premises so taken for the then remaining Term, as determined by such Governmental Authority, or, if such amount is not separately determined by the Governmental Authority, as reasonably determined by the Parties on the basis of such MAI Appraisal and (y) any other sums, including the fair market value of any Permissible Alterations made by Tenant with Landlord' s consent (to the extent such consent was required hereunder) during the Term, recoverable by Tenant, as determined by such Governmental Authority, or, if such amount is not separately determined by such Governmental Authority, as reasonably determined by the parties on the basis of such MAI Appraisal; and (iii) third, to Landlord the remaining amount (if any) of such Net Award. Notwithstanding the foregoing, Landlord shall have the sole and exclusive power to collect, receive and retain any and all Awards and to make any compromise or settlement in connection with any Condemnation; provided, however, that so long as no Disabling Event then exists, Tenant shall be entitled to participate with Landlord in, and to approve, any such compromise or settlement solely to the extent that the same relates to the portion of the Net Award payable to Tenant.

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(c) Nothing herein shall be deemed to preclude Tenant from seeking and retaining its interest in a separate award to Tenant for Tenant' s Property and/or (subject to the provisions of any Legal Requirements) Tenant' s moving expenses, business dislocation damages or other similar claims (provided, however, that such claim shall not reduce the Award that would otherwise be paid over or assigned to Landlord).

12.6 **Landlord' s Restoration Obligations**. Notwithstanding the foregoing, from and after the Partial Property Termination Date (if any) with respect to a Tenant Option Property, unless otherwise agreed to between the Parties in connection with the exercise of the applicable Tenant Option, in the event that (a) a Condemnation occurs that affects both the Tenant Retained Portion and the Landlord Retained Portion of such Tenant Option Property and (b) this Lease has not been terminated with respect to such Tenant Retained Portion in accordance with Section 12.4(b), then Landlord shall, to the extent of the Net Award actually received by Landlord with respect to such Tenant Retained Portion, promptly restore such Tenant Retained Portion (excluding any Required Removal Alterations made by Tenant with respect thereto) as nearly as possible to its condition, character and quality immediately prior to such Condemnation.

ARTICLE XIII
DEFAULT

13.1 **Events of Default**. The occurrence of any of the following shall constitute an "**Event of Default**":

(a) Tenant shall fail to pay any Base Rent when due; provided, however, that, not more than twice in any twelve (12) month period, any such failure to pay Base Rent when due shall not be an Event of Default unless such failure continues for three (3) Business Days after Landlord delivers Notice of such failure to Tenant;

(b) Tenant shall fail to pay any Additional Rent when due and such failure continues for thirty (30) days after Landlord delivers Notice of such failure to Tenant;

(c) any Tenant Party shall voluntarily cause the liquidation or dissolution of itself or any other Tenant Party;

(d) Tenant or any Lease Guarantor shall:

(i) admit in writing its inability to pay its debts generally as they become due;

(ii) make a general assignment for the benefit of its creditors; or

(iii) file a petition or institute proceedings under the Bankruptcy Code or any other laws of the United States or any state or other jurisdiction thereof relating to bankruptcy, insolvency, reorganization or relief of debtors (collectively, "**Bankruptcy Laws**"), in each case (A) seeking to adjudicate it or any other Tenant Party as bankrupt or insolvent, (B) seeking liquidation, dissolution, winding up, reorganization, arrangement, adjustment, protection, relief or composition of its or any other Tenant Party or the debts of it or any other Tenant Party or (C) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or any other Tenant Party or any substantial portion of its assets or properties (each, an "**Insolvency Event**");

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(e) any Insolvency Event caused by any Person other than a Tenant Party shall occur with respect to Tenant or any Lease Guarantor and such Insolvency Event shall not be dismissed, vacated, set aside or stayed within sixty (60) days following the date of such occurrence; provided, however, that (i) if any Tenant Party colluded with creditors to cause the occurrence of such Insolvency Event under this Section 13.1(e), the foregoing sixty (60) day cure period shall not apply and (ii) no Insolvency Event with respect to any Lease Guarantor under this Section 13.1(e) shall be an Event of Default or a Major Event of Default so long as (A) such Insolvency Event was not caused by a Tenant Party or an Affiliate of any Tenant Party, (B) no Tenant Party or Affiliate thereof colluded with creditors to cause such Insolvency Event, (C) the Tenant Parties exercised commercially diligent efforts to cause such Insolvency Event to be dismissed, vacated, set aside or stayed during such sixty (60) day cure period, and (D) the Lease Guarantors not subject to any such Insolvency Proceeding continue, collectively, to comply with the Guarantor Financial Covenants or, within the earlier to occur of (1) the Financial Covenant Cure Period and (2) such sixty (60) day cure period, Tenant provides a Replacement Guarantor for the Lease Guarantor that is the subject of such Insolvency Event and such Replacement Guarantor (together with any Continuing Guarantors) satisfies the Guarantor Financial Covenants;

(f) Tenant shall fail to maintain any insurance coverage required to be maintained pursuant to Article XI;

(g) either (i) Tenant shall enter into subleases of space in the Demised Premises in violation of the terms of this Lease (which subleases were or are not entirely revoked or rescinded by Tenant within thirty (30) days after Notice of such violation from Landlord) and the Reference Base Rent Allocation Amounts of the Properties subject to such violations shall in the aggregate be equal to fifteen percent (15%) or more of the Reference Base Rent (the "**15% Base Rent Threshold**"), or (ii) Tenant shall assign this Lease or any Corporate Transaction shall occur, in each case, in violation of Article IX; provided, however, that any such violation pursuant to this Section 13.1(g)(ii) shall not be an Event of Default or Major Event of Default if the related Transfer violation shall be entirely revoked or rescinded by the applicable Tenant Party within thirty (30) days after the occurrence of such violation;

(h) Lease Guarantors fail to satisfy the Guarantor Financial Covenants; provided, however, that any such failure shall not be an Event of Default if, within forty-five (45) days after Notice from Landlord thereof (the "**Financial Covenant Cure Period**"), Lease Guarantors shall (i) maintain (as evidenced by documentation reasonably satisfactory to Landlord) Liquid Assets of an amount equal to or in excess of the total Base Rent coming due under this Lease for the immediately succeeding eighteen (18) month period or (ii) otherwise cure such failure, which may be effectuated by, without limitation, a Replacement Guarantor' s execution of a Replacement Guaranty, subject to the applicable provisions of this Lease;

(i) Tenant or Pledgor shall incur any secured Indebtedness that is not Permitted Indebtedness;

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(j) if (i) any Lease Guarantor shall affirmatively repudiate in writing (or in a pleading or other procedural action in any legal proceeding) any Lease Guaranty or the Environmental Indemnity Agreement or (ii) any Pledgor shall affirmatively repudiate in writing (or in a pleading or other procedural action in any legal proceeding) any Pledge Agreement;

(k) Tenant or any Lease Guarantor shall fail to deliver any Annual Financial Statements, Quarterly Financial Statements, Reporting Package, Permitted Sublease Reports or the other financial reporting required by Section 20.21(d)(i) and (iv), in each case, as and when the same is required pursuant to the terms of this Lease and such failure continues for thirty (30) days after Notice thereof from Landlord to Tenant or such Lease Guarantor (as applicable);

(l) Tenant shall use any Properties other than for Permitted Uses pursuant to Section 7.2(a) and the aggregate annual Reference Base Rent Allocation Amounts of the Properties subject to such violations shall be equal to or greater than the 15% Base Rent Threshold; provided, however, to the extent that Tenant cures any such individual violation within thirty (30) days after Notice thereof from Landlord to Tenant, such individual violation shall cease to be included in determining whether the Reference Base Rent Allocation Amounts exceed the 15% Base Rent Threshold;

(m) Tenant shall fail to execute a Severed Lease or any Severed Lease Ancillary Documents by the applicable Lease Severance Deadline and such failure continues for seven (7) days after Landlord delivers Notice of such failure to Tenant (a "**Lease Severance Event of Default**"); and

(n) if Tenant or any Lease Guarantor shall fail to observe or perform any other term, covenant or condition of this Lease or the other Lease Documents to which each is a party; provided, however, that, if such failure relates to a non-monetary obligation of Tenant or such Lease Guarantor (as applicable), then the same shall not constitute an Event of Default so long as Tenant or such Lease Guarantor (as applicable) cures such failure within thirty (30) days after Notice thereof from Landlord to Tenant or such Lease Guarantor (as applicable) (the "**Initial Cure Period**"); provided, further, that if any such failure to perform a non-monetary obligation shall be of such a nature that it cannot reasonably be cured within such Initial Cure Period (a "**Longer-Term Cure Default**") (it being understood that a failure by Tenant to deliver any estoppel certificate pursuant to Section 24.1 shall not be deemed to constitute a Longer-Term Cure Default, Tenant hereby acknowledging that any such failure may be cured within such Initial Cure Period), then, so long as Tenant or such Lease Guarantor (as applicable) promptly commences such cure following Landlord' s initial Notice of such failure and thereafter diligently and continuously prosecutes such cure, Tenant or the applicable Lease Guarantor shall have an additional period in which to complete such cure, which additional period shall in no event exceed an aggregate of ninety (90) days following the expiration of the Initial Cure Period.

(o) Notwithstanding the foregoing provisions of this Section 13.1 or anything herein to the contrary, if an Event of Default, but not a Major Event of Default (a "**Non-Major Event of Default**"), shall occur with respect to an individual Property or Demised Premises (a "**Defaulted Property**"), then Landlord agrees that it shall not exercise or enforce any applicable remedies pursuant to Sections 13.2(a)-(c) with respect to such Non-Major Event of Default if Tenant delivers a Substitution Notice to Landlord not later than ten (10) Business Days after the

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occurrence of such Non-Major Event of Default (a "**Default Substitution Election**") and, by the Substitution Date set forth in such Substitution Notice (which date shall not be later than six (6) months following delivery of such Substitution Notice), substitutes the Defaulted Property with a Qualified Replacement Property and complies with all of its obligations in connection with such substitution, in each case in accordance with the applicable terms and conditions of Section 1.7 (it being agreed that Tenant may exercise such right irrespective of whether the Substitution Date shall occur during a Permitted Substitution Period and whether or not any Maximum Substitution Limitation shall be exceeded by reason of such Default Substitution Election); provided, however, that, notwithstanding anything to the contrary in Section 1.7 or this Lease, (i) Tenant may only make a Default Substitution Election (A) up to a maximum of three (3) times during any individual Lease Year and (B) with respect to a maximum of twenty-five (25) Properties during the Initial Term (collectively, "**Tenant' s Default Substitution Cure Right**") and (ii) if Tenant delivers a Substitution Notice in connection with a Default Substitution Election, Landlord shall have the right (such right, the "**Landlord Default Substitution Cancellation Right**"), exercised by written Notice delivered to Tenant within fifteen (15) days after Landlord' s receipt of the applicable Substitution Notice, to cancel Tenant' s right and/or obligation to replace the applicable Defaulted Property with a Replacement Property, in which event (A) such Defaulted Property shall remain subject to this Lease, (B) Tenant shall have no further right or obligation to replace such Defaulted Property with a Replacement Property, (C) Tenant shall have no obligation to cure the related Non-Major Event of Default (regardless of the continuing or recurring nature of such Non-Major Event of Default), and Landlord' s exercise of the Landlord Default Substitution Cancellation Right with respect to such Replacement Property shall constitute Landlord' s irrevocable waiver of such Non-Major Event of Default (and any continuing or recurring occurrence thereof) and the exercise of its rights and remedies under this Lease with respect thereto, (D) there shall be no change in the Base Rent, and (E) such Defaulted Property shall not count towards the Tenant' s Default Substitution Cure Right limit. As used herein, "**Major Event of Default**" means an Event of Default specified in any of clauses (a) through (h), or (j) through (m) (provided, however, that, with respect to such clause (m), the same shall only constitute a Major Event of Default if five (5) or more Lease Severance Events of Default occur during any rolling twelve (12) month period).

13.2 **Certain Remedies**. Subject (with respect to any Non-Major Event of Default) to Section 13.1(n) and the last paragraph of this Section 13.2, upon the occurrence and during the continuance of an Event of Default, Landlord shall have the right, at its sole option, concurrently, successively, or in any combination, to:

(a) upon Notice to Tenant, (i) if such Event of Default is a Major Event of Default, terminate this Lease in its entirety (a "**Total EOD Termination**") or (ii) if such Event of Default is a Non-Major Event of Default, terminate this Lease solely with respect to the applicable Defaulted Property (a "**Partial EOD Termination**" and, together with any Total EOD Termination, each, an "**EOD Termination**"), in each case effective as of the termination date set forth in such Notice (an "**EOD Termination Date**");

(b) upon Notice to Tenant, in connection with any EOD Termination pursuant to the foregoing clause (a), (i) accelerate the Rent and recover from Tenant the Applicable Acceleration Amount in accordance with Section 13.3(c)(ii); and/or (ii) require Tenant to promptly, at Tenant' s sole cost and expense, in the case of a Partial EOD Termination, execute any Lease Document Amendments required by Landlord in connection therewith;

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(c) whether or not Landlord has terminated this Lease, terminate Tenant' s right of possession of (i) if such Event of Default is a Major Event of Default, all or any portion of the Demised Premises or (ii) if such Event of Default is a Non-Major Event of Default, the applicable Defaulted Property, upon which Tenant shall, as promptly as practicable (and in all events within six (6) months after Landlord' s notice of such termination of possession), surrender to Landlord possession thereof (with Tenant' s Property removed), and Landlord may enter upon and repossess such Demised Premises by summary proceedings, ejectment or otherwise and/or remove Tenant and all other Persons and any Tenant' s Property or Alterations (other than any Permissible Alterations) from such Demised Premises;

(d) immediately set off any money of Tenant or any Lease Guarantor held by Landlord under this Lease or any other Lease Document against any amounts owing by Tenant or any Lease Guarantor; provided, however, that for any Non-Major Event of Default, any such set off right shall be limited to the unpaid Rent (including Third-Party Charges) or any other amounts owed by Tenant or any Lease Guarantor to Landlord in connection with the applicable Defaulted Property; and/or

(e) exercise any other right or remedy available to Landlord at law or in equity in connection with such Event of Default (except to the extent that any such right or remedy is inconsistent with clauses (a) through (d) above). Tenant shall pay as Additional Rent all Costs and Expenses incurred by or on behalf of Landlord, including reasonable attorneys' fees and expenses, and court costs, as a result of any Event of Default.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, if an Event of Default occurs with respect to an individual Property and such Event of Default is a Non-Major Event of Default, then such Event of Default shall not in and of itself cause an Event of Default to occur at another Property (it being understood that only a Major Event of Default shall result in a "cross-default" of the Properties under this Lease).

13.3 **Damages**.

(a) Unless Landlord shall expressly agree otherwise in writing, none of (i) the exercise and/or enforcement by Landlord of any of its rights or remedies set forth in this Article XIII, (ii) the failure of Landlord to re-let all or any portion of any Demised Premises, (iii) the reletting of all or any portion of any Demised Premises or (iv) the inability of Landlord to collect or receive any rentals due upon any such reletting, shall relieve Tenant of any of its duties, obligations or liabilities under this Lease, all of which shall survive any termination of this Lease or other exercise or enforcement by Landlord of any of its rights or remedies hereunder.

(b) Notwithstanding anything to the contrary in this Lease, Tenant hereby agrees that Landlord shall have no duty or obligation to mitigate any of Landlord' s damages under this Lease unless, and then only to the extent that, the Legal Requirements of any applicable State impose such a duty or obligation on Landlord with respect to its exercise of remedies in that State.

(c) If Landlord accelerates the Rent pursuant to Section 13.2(b)(i) (whether or not Landlord terminates Tenant' s right to possession of the applicable Demised Premises), Tenant shall immediately pay to Landlord:

(i) all Rent due and payable under this Lease with respect to the entire Demised Premises (or, in the case of a Partial EOD Termination, the applicable Defaulted Property(ies)) through and including the applicable EOD Termination Date; and

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(ii) as liquidated and agreed upon final damages for the occurrence of such Event of Default, the Present Value of the excess, if any, of (1) the sum of all Base Rent, Additional Rent and other sums that would be payable under this Lease by Tenant with respect to the entire Demised Premises (or, in the case of a Partial EOD Termination, the applicable Defaulted Property(ies)) from the date of such demand through and including the then current Expiration Date (i.e., in the absence of the applicable EOD Termination, and taking into account any extension of such Expiration Date pursuant to any exercised Renewal Options) over (2) the Fair Market Rent for the applicable Demised Premises for the same period (collectively, the "**Applicable Acceleration Amount**").

(d) In the event of (i) any Total EOD Termination in connection with which Landlord elects not to accelerate the Rent and recover from Tenant the Applicable Acceleration Amount or (ii) any termination by Landlord of Tenant' s right to possession of any Demised Premises pursuant to Section 13.2(c), Tenant shall, until the Expiration Date (i.e., in the absence of the applicable EOD Termination, and taking into account any extension of such Expiration Date pursuant to any exercised Renewal Options), and whether or not Landlord shall have re-let the applicable Demised Premises, pay the excess of all Rent and other sums payable by Tenant to Landlord under this Lease with respect to the entire Demised Premises (or, in the case of a Partial EOD Termination, the applicable Defaulted Property(ies)) as the same become (or would become, in the absence of any such EOD Termination) due and payable hereunder, together with interest at the Default Rate from the date the same become (or would become, in the absence of any such EOD Termination) due until paid, over (without limiting anything in Section 13.2(b)) rents and other sums received by Landlord for the applicable period pursuant to any reletting of such Demised Premises (or any portion thereof), and Landlord may enforce, by action or otherwise, any other term or covenant of this Lease.

13.4 **Holdover**. In the event that Tenant remains in possession of any Demised Premises after the expiration or earlier termination of this Lease without the prior written consent of Landlord (which may be granted or withheld in Landlord' s sole and absolute discretion), (a) Tenant shall, at the option of Landlord, be deemed to be occupying such Demised Premises as a tenant from month to month, subject to all of the terms and conditions of this Lease, (b) Tenant shall pay Base Rent in effect with respect to such Demised Premises as of the Payment Date immediately preceding the date of such expiration or termination multiplied by (i) one hundred twenty-five percent (125%) for the first thirty (30) days of its holdover, (ii) one hundred thirty-five percent (135%) for the next thirty (30) days of its holdover, (iii) one hundred forty-five percent (145%) for the next thirty (30) days of its holdover, (iv) one hundred fifty-five percent (155%) for the next thirty (30) days of its holdover, and (ii) one hundred sixty-five percent (165%) for the remainder of its holdover, (c) Tenant shall remain liable for the payment and performance of all of its other obligations under this Lease, including, without limitation, the payment of all Additional Rent, during the period of any such holdover, and (d) if Tenant holds over for more than ninety (90) days, Tenant shall be liable for all Claims incurred or suffered by Landlord as a result of Tenant' s holdover, including without limitation, any damages suffered by Landlord resulting from the termination by an incoming tenant of its proposed lease for all or any portion of the Demised Premises.

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13.5 **Receiver**. Without limiting any of the foregoing provisions of this Article XIII, upon the occurrence and during the continuance of an Event of Default, Landlord shall be entitled, as a matter of right, to apply for and have a receiver or receivers acceptable to Landlord appointed under applicable Legal Requirements by a court of competent jurisdiction in order to protect and preserve Landlord' s interest under this Lease, all or any portion of any Demised Premises, the Rent and/or other revenues, earnings, income, products and profits of or from such Demised Premises, in each case pending the outcome of such proceedings, with such powers as such court shall confer (which shall be limited, in the case of a Partial EOD Termination, to the applicable Defaulted Properties).

13.6 **Waiver**. Upon the occurrence of a Disabling Event, Tenant hereby waives, to the extent permitted by applicable law, for itself and all those claiming under it, including Tenant' s creditors, (a) any right of redemption, re-entry or repossession with respect to the Demised Premises (or the applicable Defaulted Properties, in each case of a Non-Major Event of Default) or any right to have a continuance of this Lease after any termination of this Lease or of Tenant' s right of possession with respect to all or any portion of such Demised Premises or Defaulted Properties (as applicable) and (b) the benefit of any Legal Requirements now or hereafter in force exempting property from liability for debt or for distress for rent.

13.7 **Landlord' s Right to Cure Tenant' s Default**. If an Event of Default shall have occurred and be continuing, in addition to and not in limitation of any and all other rights and remedies of Landlord under this Lease, at law or in equity, and without waiving or releasing any Event of Default or any obligation or liability of Tenant hereunder, Landlord may (but shall be under no obligation to) make such payments or perform such acts for the account and at the expense of Tenant, and may enter upon the applicable Demised Premises or any applicable portion thereof for such purposes and take all such other actions at such Demised Premises, in each case as may be necessary or appropriate in Landlord' s sole discretion; provided, however, that neither any such entry or action by Landlord nor any repossession or expulsion of any Person by Landlord from any Demised Premises pursuant to this Article XIII shall constitute an actual or constructive eviction or repossession without, in each case, Landlord' s clear and unambiguous expression in writing of its intention to effect such an eviction. All sums, costs and expenses (including reasonable attorneys' fees and expenses) incurred or paid by Landlord in connection with the foregoing, together with interest thereon at the Default Rate from the date on which such sums or expenses were so paid or incurred until repaid by Tenant, shall be paid by Tenant to Landlord as Additional Rent upon Landlord' s demand therefor. The obligations of Tenant and rights of Landlord set forth in this Article XIII shall survive any EOD Termination or any other expiration or earlier termination of this Lease.

ARTICLE XIV
LANDLORD' S FINANCING

14.1 **Landlord' s Financing**. Without the consent of Tenant, Landlord may from time to time, directly or indirectly, (a) create or otherwise cause to exist, with respect to any Demised Premises, one or more mortgages, deeds of trust, deeds to secure debt or other similar security agreements or security interests (each, a "**Landlord Mortgage**") and/or (b) pledge, collaterally assign or grant a security interest in this Lease, any other Lease Documents, any interest of Landlord therein or any direct or indirect Equity Interests in Landlord (collectively, "**Other Collateral**", and

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each of the foregoing instruments and documents, together with any Landlord Mortgage, collectively, "**Landlord Financing Documents**"), in each case in favor of any mortgage lender, mezzanine lender or other holder of Indebtedness of Landlord or its Affiliates from time to time (each, a "**Landlord Lender**"). This Lease is, and at all times shall automatically and without any requirement for any further action be, subject and subordinate to the liens of any Landlord Financing Documents that may now or hereafter affect all or any portion of any Demised Premises or this Lease and to all renewals, modifications, consolidations, replacements, restatements and extensions thereof, in each case provided that such Landlord Financing Documents, or a separate subordination, non-disturbance and attornment agreement with such Landlord Lender (an "**SNDA**") in substantially the form and substance of **Exhibit H** attached hereto (the "**Approved SNDA Form**") or otherwise in form and substance reasonably satisfactory to Tenant, expressly provides for the recognition of this Lease and Tenant' s rights hereunder with respect to each individual Property forming the Demised Premises hereunder, unless a Major Event of Default has occurred and is continuing hereunder or, with respect to an individual Property, unless an Event of Default has occurred and is continuing hereunder with respect to such individual Property. Landlord shall use commercially reasonable efforts to obtain from the holder of any Landlord Mortgage (a "**Landlord Mortgagee**") an SNDA on the Approved SNDA Form or such Landlord Mortgagee' s then customary form (with such changes to such customary form as may be reasonably requested by Tenant). If, in connection with obtaining any Landlord Mortgage with respect to all or any portion of any Demised Premises, any Landlord Mortgagee or prospective Landlord Mortgagee shall request (i) Tenant' s cooperation and/or (ii) Tenant' s execution, acknowledgement and delivery of any reasonable amendments or modifications of or to this Lease, then Tenant shall reasonably cooperate in connection therewith and execute, acknowledge and deliver any such amendments or modifications (as applicable) so long as such amendments or modifications (as applicable) do not, individually or in the aggregate, increase Tenant' s duties, obligations or liabilities, or decrease Tenant' s rights under, this Lease or any Property Documents other than to a de minimis extent. Landlord covenants for the benefit of Tenant that there is no Landlord Mortgage in effect on the date of this Lease.

14.2 **Attornment**. If (a) Landlord' s interest in all or any portion of any Demised Premises or (b) any Other Collateral is sold, conveyed, transferred or terminated by operation of law or in connection with any exercise and/or enforcement by any Landlord Lender of any of its rights or remedies under any Landlord Financing Documents, at law or in equity (or in lieu of such exercise, including pursuant to a deed or assignment in lieu of foreclosure, and including any exercise of any voting control rights by any Landlord Lender with respect to any direct or indirect Equity Interests in Landlord), then (i) at the request and option of the new owner or other transferee of such Demised Premises or applicable portion thereof or of any such Other Collateral, as the case may be (each, a "**Successor Landlord**"), Tenant shall either (A) if required as a result thereof, immediately attorn to and recognize such Successor Landlord as Tenant' s "landlord" under this Lease and/or (B) promptly following such Successor Landlord' s request, enter into a new lease substantially in the form of this Lease (a "**New Lease**") with such Successor Landlord; provided, however, that (1) such Successor Landlord shall not be liable for the acts of Landlord, except to the extent expressly set forth in the applicable SNDA and (2) the execution of any such New Lease shall not, individually or in the aggregate, increase Tenant' s duties, obligations or liabilities, or decrease Tenant' s rights under, this Lease or any Property Documents.

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14.3 **Compliance with Landlord Financing Documents**. Tenant hereby agrees to cooperate with the reasonable requests of Landlord in order to assist Landlord in complying with its obligations under any Landlord Financing Documents executed by Landlord or any Affiliate of Landlord to the extent the same obligate Landlord and/or its Affiliates to comply (or cause the tenants, subtenants and/or operators of the Demised Premises to comply) with certain covenants, representations and warranties contained therein relating to the reporting required under this Lease, the procurement and maintenance of insurance coverages with respect to the Demised Premises and/or compliance with applicable Legal Requirements. Notwithstanding the foregoing, Tenant' s obligations shall be limited by the terms of this Lease only and in no event shall Tenant be bound by the terms and conditions of such Landlord Financing Documents (or be obligated to comply with the same), and shall be conditioned on Landlord' s agreement to reimburse Tenant for any additional Cost or Expense (i.e., in addition to the obligations of Tenant in this Lease other than pursuant to this Section 14.3) incurred by Tenant to comply with the foregoing. Notwithstanding anything to the contrary in this Lease, Tenant is agreeing to cooperate with Landlord solely as an accommodation to Landlord and Tenant' s failure to comply with any request of Landlord pursuant to the terms of this Section 14.3 shall not be deemed a default under this Lease (provided, however, that the foregoing shall not detract from Tenant' s other obligations under this Lease).

14.4 **Limitation of Successor Landlord Liability**. Notwithstanding anything herein to the contrary, in the event that any Successor Landlord shall acquire all or any portion of any Demised Premises or any Other Collateral, such Successor Landlord shall have no obligation, nor incur any liability, beyond Successor Landlord' s interest, if any, in the Demised Premises, and Tenant shall look exclusively to such interest, if any, of such Successor Landlord in the Demised Premises for the payment and discharge of any obligations imposed upon Successor Landlord under this Lease. Tenant hereby agrees that, with respect to any monetary judgment that may be obtained or secured by Tenant against any Successor Landlord, Tenant shall look solely to the estate or interest owned by Successor Landlord in the Demised Premises (if any), and Tenant shall not collect or attempt to collect any such judgment against any Successor Landlord personally or against any Affiliate, shareholder, member, partner, director or officer thereof personally or out of any other assets or properties of such Successor Landlord or such Affiliate, shareholder, member, partner, director or officer (as applicable). Nothing in this Section 14.4 shall be deemed to imply or create any duties, obligation or liabilities on the part of any Successor Landlord to or in favor of Tenant or with respect to any Demised Premises or any portion thereof or interest therein.

14.5 **Landlord Lenders as Third Party Beneficiaries**. Each Landlord Lender shall be an express and intended third party beneficiary of the terms and provisions of this Article XIV and of any other term or provision in this Lease expressly requiring the approval or consent of such Landlord Lender and shall have the right to enforce all such terms and provisions against Tenant.

14.6 **Right of Landlord Lender to Enforce Lease**. Tenant hereby agrees that, to the extent a Landlord Lender is expressly permitted to do so under the Landlord Financing Documents and a minimum of ten (10) days' prior Notice thereof shall have been given to Tenant by Landlord or Landlord Lender, such Landlord Lender may exercise any self-help remedies of Landlord under this Lease (subject to the applicable terms and provisions hereof) on behalf of Landlord.

14.7 **Cure of Landlord Defaults**. Subject to the provisions of any applicable SNDA, no default by Landlord of its obligations under this Lease shall be deemed to exist so long as any

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applicable Landlord Lender, in good faith, (a) has received Notice from Tenant of such default, (b) shall have commenced promptly to cure the default in question, and prosecutes such cure to completion with reasonable diligence and continuity, or (c) shall have, if possession of any applicable Demised Premises is required to cure the default in question, either (i) entered into possession of such Demised Premises with the permission of Tenant for such purpose or (ii) notified Tenant of its intention to institute enforcement proceedings under any applicable Landlord Financing Documents to obtain possession of Landlord' s interest in such Demised Premises or of any applicable Other Collateral, directly or through a receiver, and so long as such Landlord Lender thereafter prosecutes such proceedings with reasonable diligence and continuity; provided, however, that the foregoing grant of such additional cure time for the benefit of a Landlord Lender shall not, as between Landlord and Tenant (A) prevent or hinder Tenant from exercising any other remedy (e.g., self-help), or (B) relieve Landlord of any liability or obligation.

ARTICLE XV
INDEMNIFICATION

15.1 **Indemnification**.

(a) Tenant shall pay, protect, indemnify, save and hold harmless and defend Landlord and all other Landlord Indemnified Parties from and against all liabilities, obligations, claims, losses, damages, penalties, causes of action, suits, demands, judgments, and Costs and Expenses (including any of the foregoing that may be incurred in the enforcement of this Article XV) (collectively, "**Claims**"), in each case, of any nature whatsoever, howsoever caused, and arising from and after the Commencement Date and during the Term out of or in connection with any of the following, but in each case specifically excluding (x) any Claims to the extent that such Claims arise out of the gross negligence or willful misconduct of any Landlord Indemnified Party or to the extent such Claims are Landlord Indemnified Matters and (y) any indirect, speculative or consequential damages from whatever cause (except to the extent any such damages are actually suffered or incurred by a Landlord Indemnified Party in connection with a claim brought by a third party in a legal action or proceeding against such Landlord Indemnified Party) (collectively, together with any other matters as to which Tenant or any Lease Guarantor is required under any Lease Documents to which it is party to pay or protect, indemnify, save and hold harmless and/or defend Landlord or any Landlord Indemnified Parties, collectively, the "**Tenant Indemnified Matters**"): (i) any accident, injury to or death of persons or loss of or damage to property occurring on or about any Demised Premises and (prior to, only with respect to any Tenant Option Property, the applicable Partial Property Termination Date (if any)) any related Shopping Center or any other adjacent property, including any claims made by any of Tenant' s Related Users, (ii) any matter pertaining to the ownership, leasing, use, misuse, non-use, occupancy, operation, management, condition, design, construction, maintenance, repair, restoration or Alterations (each, a "**Use**") of or to any Demised Premises or Tenant' s Property (except to the extent that Landlord performs any such leasing, operation, management, design, construction, maintenance, repair, restoration or Alterations pursuant to the terms of this Lease or otherwise), (iii) any Use by Tenant or any Person claiming by, through or under Tenant (including any of Tenant' s Related Users) of any Common Areas, (iv) any violation by Tenant or any such other Person claiming by, through or under Tenant of any of the terms or provisions of this Lease or any Property Requirements, (v) any contest by Tenant of any Legal Requirement or Insurance Requirement, or (vi) any Retail Operations Claims.

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(b) Landlord shall pay, protect, indemnify, save and hold harmless and defend Tenant and all other Tenant Indemnified Parties from and against all Claims, in each case, of any nature whatsoever, howsoever caused, and arising from out of or in connection with any of the following, but in each case specifically excluding (x) any Claims to the extent that such Claims arise out of the gross negligence or willful misconduct of any Tenant Indemnified Party or to the extent such Claims are Tenant Indemnified Matters and (y) any indirect, speculative or consequential damages from whatever cause (except to the extent any such damages are actually suffered or incurred by a Tenant Indemnified Party in connection with a claim brought by a third party in a legal action or proceeding against such Tenant Indemnified Party) (collectively, the "**Landlord Indemnified Matters**"): (i) the gross negligence or willful misconduct of Landlord arising in connection with this Lease, (ii) Landlord' s Pre-Existing Environmental Obligations and (iii) any of the following, to the extent the same arise with respect to the Landlord Retained Portion of a Tenant Option Property from and after a Partial Property Termination Date: (A) any accident, injury to or death of persons or loss of or damage to property occurring on or about any Landlord Retained Portion, including any claims made by any of Landlord' s Related Users, (B) any matter pertaining to the Use of or to any Landlord Retained Portion, (C) any Use by Landlord or any Person claiming by, through or under Landlord (including any of Landlord' s Related Users) of any Common Areas, and (D) any violation by Landlord or any such other Person claiming by, through or under Landlord of any of the terms or provisions of this Lease or any applicable Property Requirements.

(c) Any amounts that become payable by Tenant or Landlord (each, as applicable, an "**Indemnifying Party**") under this Section 15.1 shall bear interest at the Default Rate from and after the date that is five (5) Business Days following the date of the applicable Indemnified Party' s demand therefor through and including the date of such Indemnifying Party' s payment thereof. The Indemnifying Party shall, at its sole cost and expense, contest, resist and defend any Claim asserted or instituted against any Indemnified Party by reason of any of the Tenant Indemnified Matters or the Landlord Indemnified Matters, as applicable. If any Indemnified Party receives written notice of any Claim, such Indemnified Party shall give the applicable Indemnifying Party prompt written notice of such Claim; provided, however, that (A) such Indemnified Party shall have no liability for an inadvertent failure to give notice to the Indemnifying Party of any such Claim and (B) the inadvertent failure of such Indemnified Party to give such notice to the Indemnifying Party shall not limit the rights of such Indemnified Party or the obligations of the Indemnifying Party with respect to such Claim, provided that the Indemnifying Party shall have no obligation to indemnify or defend any Claim (or pay interest on any sums expended by such Indemnified Party) until the Indemnifying Party receives actual Notice thereof. The Indemnifying Party shall have the right to control the defense or settlement of any Claim; provided, however, that (1) if the compromise or settlement of any such Claim shall not result in the complete release of the applicable Indemnified Party therefrom, then such compromise or settlement shall require the prior written approval of such Indemnified Party (not to be unreasonably withheld, conditioned or delayed) and (2) no such compromise or settlement shall include any admission of wrongdoing on the part of such Indemnified Party; provided, further, that any Indemnified Party shall have the right to reasonably approve counsel engaged to defend any Claim by the Indemnifying Party (except to the extent such counsel shall be appointed by the Indemnifying Party' s insurer) and, at such Indemnified Party' s election, shall have the right (at its own cost), but not the obligation, to participate in the defense of any Claim with counsel of its choice. Notwithstanding the foregoing, (x) the Indemnified Party may employ counsel of its

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choice to monitor the Indemnifying Party' s contest, resistance and/or defense (as applicable) of any such Claim, the cost of which shall be paid by such Indemnified Party and (y) if any Disabling Event has occurred and is continuing, Landlord shall have the right to control the defense and settlement of any applicable Claim, with counsel of Landlord' s choice and at Tenant' s sole cost and expense.

(d) Except as otherwise provided in Section 15.1(b), Tenant hereby expressly releases Landlord and all other Landlord Indemnified Parties from, and waives all claims for, damage or injury to persons, theft, loss of use of or damage to property and loss of business sustained by Tenant or any of its Affiliates or Related Users that may result from any Demised Premises, any Common Areas and/or any Tenant' s Property or any equipment in connection therewith becoming in disrepair, or that results from any damage, accident or event in or about any Demised Premises. Without limiting the generality of the foregoing, the foregoing release shall apply particularly, but not exclusively, to any flooding, damage caused by any building equipment and/or apparatus, water, snow, frost, steam, excessive heat or cold, broken glass, sewage, gas, odors, excessive noise or vibration, death, loss, conversion, theft, robbery, or the bursting or leaking of pipes, plumbing fixtures or sprinkler devices; provided, however, that such release shall not (i) limit Landlord' s obligations pursuant to Section 1.6 or any other provisions of this Lease (including Sections 10.1 and 10.2) with respect to any Tenant Option Property from and after the applicable Partial Property Termination Date (if any), (ii) apply to any Claims to the extent such Claims arise out of the gross negligence or willful misconduct of Landlord or (iii) apply to the Landlord' s Pre-Existing Environmental Obligations.

(e) The Parties' respective obligations under this Article XV shall survive any termination of this Lease.

ARTICLE XVI
NO MERGER

16.1 **No Merger**. There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate and (b) the fee estate in the Demised Premises or any interest therein.

ARTICLE XVII
CONVEYANCE BY LANDLORD

17.1 **Conveyance by Landlord**. Without limiting any terms or provisions of this Lease with respect to any Successor Landlord, if Landlord or any successor owner of the Demised Premises shall sell, convey or otherwise transfer all or any portion of any Demised Premises, other than merely as security for Indebtedness (a "**Property Sale**"), and the purchaser or other applicable transferee expressly assumes all obligations of Landlord arising from and after the date of such Property Sale, then Landlord or such successor owner, as the case may be, shall thereupon be absolutely and unconditionally released from all duties, obligations and liabilities under this Lease first arising or accruing from and after the date of such Property Sale and all such future liabilities and obligations shall thereupon be binding upon such purchaser, grantee or other transferee, as the case may be. Except as may be otherwise expressly set forth herein, any Property Sale shall be

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subject to Tenant' s First Offer Right, Modified ROFO Right, ROFO Right or General Marketing Inclusion Right, as applicable, and the provisions set forth on Schedule 1.9(g) shall apply with respect to such Property Sale.

ARTICLE XVIII
QUIET ENJOYMENT

18.1 **Quiet Enjoyment**. So long as no Disabling Event has occurred and is continuing, Tenant shall peaceably and quietly have, hold and enjoy the Demised Premises for the Term, free of any claim or other action by Landlord or any Person claiming by, through or under Landlord, in each case except for (but subject to the provisions hereof pertaining to) all Encumbrances. No failure by Landlord to comply with the foregoing covenant shall give Tenant any right to cancel or terminate this Lease or to exercise any Set-Off Rights. Notwithstanding the foregoing, Tenant shall have the right, by separate and independent action, to pursue any claim that it may have against Landlord as a result of a breach by Landlord of the covenant of quiet enjoyment contained in this Section 18.1, subject to Section 20.3.

ARTICLE XIX
NOTICES

19.1 **Notices**. Any notice, request or other communication required or desired to be given by any party hereunder shall be in writing and shall be sent by registered or certified mail, postage prepaid and return receipt requested, by hand delivery or express or overnight courier service, or by email transmission, to the following address and/or email address:

Prior to the PropCo Closing Date:

To Tenant:
Penney Tenant I LLC
c/o Penney Intermediate Holdings LLC
P.O. Box 10001
Dallas, Texas 75301-4106
Attention: Real Estate Counsel
Email: btreadwa@jcp.com

With a copy to:
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Salvatore Gogliormella, Esq.
Email: sgogliormella@paulweiss.com

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To Landlord:	J. C. Penney Corporation, Inc. 6501 Legacy Drive Plano, Texas 75024 Attention: Brandy Treadway Email: btreadwa@jcp.com J. C. Penney Properties, LLC 6501 Legacy Drive Plano, Texas 75024 Attention: Brandy Treadway E-mail: btreadwa@jcp.com JCPenney Puerto Rico, Inc. 6501 Legacy Drive Plano, Texas 75024 Attention: Brandy Treadway Email: btreadwa@jcp.com
With copies to:	Milbank LLP 55 Hudson Yards New York, New York 10001 Attention: Kevin O' Shea, Esq. Email: koshea@milbank.com RENotice@milbank.com
and:	Kirkland & Ellis LLP 601 Lexington Avenue New York, New York 10022 Attention: Joshua A. Sussberg Aparna Yenamandra John Goldman Stephen G. Tomlinson Email: jsussberg@kirkland.com aparna.yenamandra@kirkland.com john.goldman@kirkland.com stomlinson@kirkland.com

From and after the PropCo Closing Date:

To Tenant:	At the notice address set forth above for Tenant
With a copy to:	Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, New York 10019 Attention: Salvatore Gogliormella, Esq. Email: sgogliormella@paulweiss.com

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To Landlord:	GLAS Trust Company LLC c/o GLAS USA LLC GLAS AMERICAS LLC 3 Second Street, Suite 206 Jersey City, New Jersey 07311 Attention: Client Services Email: ClientServices.americas@glas.agency
With copies to:	Milbank LLP 55 Hudson Yards New York, New York 10001 Attention: Kevin O' Shea, Esq. Email: koshea@milbank.com RENotice@milbank.com
and:	Hilco JCP, LLC c/o Hilco Real Estate, LLC 5 Revere Drive, Suite 206 Northbrook, Illinois 60062 Attention: Greg Apter and Neil Aaronson Email: gapter@hilcoglobal.com; naaronson@hilcoglobal.com

or to such other address and/or email address as either Party may hereafter designate upon Notice to the other Party. Notice given in accordance with this Section 19.1 shall be deemed to have been given (a) if by hand or by express or overnight courier service, on the date of personal delivery, if such delivery is made on a Business Day, or if not, on the first (1st) Business Day after such delivery; if such delivery is refused, Notice shall be deemed to have been given on the date such delivery was first attempted; (b) if by mail, on the third (3rd) Business Day after mailing thereof; and (c) if by email transmission, upon delivery with receipt acknowledged by the recipient thereof.

ARTICLE XX
MISCELLANEOUS

20.1 **Survival**. Notwithstanding anything to the contrary contained in this Lease, all Surviving Obligations shall survive any expiration or earlier termination of this Lease.

20.2 **Partial Invalidity**. If any provision, term, covenant or condition of this Lease or the application thereof to any Person or circumstance shall, to any extent, be determined by a court of competent jurisdiction or any arbitrator to be invalid or unenforceable, the remainder of this Lease, or the application of such provision, term, covenant or condition to Persons or circumstances other than those as to which it is determined to be invalid or unenforceable, shall not be affected thereby, and each provision, term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

20.3 **Non-Recourse**. Tenant hereby agrees to look solely to the interest of Landlord in the Demised Premises as it exists from time to time for the satisfaction of any claim or liability of Landlord under this Lease, and Tenant shall not institute any action or proceeding against, nor seek

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to recover any judgment from, Landlord personally or any other property of Landlord, and Landlord' s liability hereunder shall be limited solely to its interest in the Demised Premises as it exists from time to time, and Tenant shall have no recourse under or in respect of this Lease against any other assets of Landlord or against any of Landlord' s Affiliates or any other Person having an interest in Landlord or any such Person' s assets whatsoever. Subject to the terms of Section 3.5, the interest of Landlord in and to the Demised Premises shall include, without limitation, the rents, income, receipts, revenues, issues and profits issuing from the applicable portion of the Demised Premises, any proceeds of sale, any proceeds from insurance policies and any Award. Without limiting the foregoing, Tenant hereby agrees that neither any constituent partner, member or shareholder or owner of any direct or indirect legal, beneficial or equitable interest in Landlord nor any manager, managing member, director, officer or employee of Landlord or any such Person shall ever be personally liable for, nor shall any personal assets of any such Person ever be subject to, any such claim, liability or judgment or for the payment of any monetary obligation to Tenant. Furthermore, except as otherwise expressly provided herein, (a) in no event shall Landlord ever be liable to Tenant for any damages with respect to or arising out of any Consent Dispute, except to the extent that an arbitrator determines in a final, non-appealable judgment (including pursuant to Section 27.1(h)) that Landlord acted in bad faith in withholding its consent in violation of the applicable terms and provisions of this Lease in connection with the subject matter of such Consent Dispute and (b) in no event shall Landlord ever be liable to Tenant, nor shall Tenant ever be liable to Landlord, for any indirect, speculative or consequential damages (including, without limitation, damages with respect to any lost profits), from whatever cause, except to the extent any such damages are actually suffered or incurred by Tenant or Landlord (as applicable) in connection with any claim brought by a third party in a legal action or proceeding against such Party.

20.4 **Successors and Assigns**. This Lease shall be binding upon Landlord and its successors and assigns, and upon Tenant and its permitted successors and assigns pursuant to Article IX.

20.5 **Governing Law**. THIS LEASE WAS NEGOTIATED IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL JURISDICTIONAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTIONS EMBODIED HEREBY. ACCORDINGLY, IN ALL RESPECTS THIS RETAIL MASTER LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT ALL PROVISIONS HEREOF RELATING TO THE CREATION OF THE LEASEHOLD ESTATE AND ALL REMEDIES SET FORTH IN Article XIII RELATING TO RECOVERY OF POSSESSION OF ANY DEMISED PREMISES (SUCH AS AN ACTION FOR UNLAWFUL DETAINER, *IN REM* ACTION OR OTHER SIMILAR ACTION) (COLLECTIVELY, "**LOCAL REMEDIES**"), EXCLUDING, FOR THE AVOIDANCE OF DOUBT, THE REMEDIES SET FORTH IN THE PLEDGE AGREEMENT, SHALL BE CONSTRUED AND ENFORCED ACCORDING TO, AND GOVERNED BY, THE LAWS OF THE STATE OF SUCH DEMISED PREMISES.

20.6 **Consent to Jurisdiction; Waiver of Trial by Jury**. EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE CITY AND STATE OF NEW YORK,

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BOROUGH OF MANHATTAN, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS LEASE (INCLUDING ANY BREACH OF THE TERMS OR PROVISIONS HEREOF BUT SUBJECT TO THE PROVISO TO THIS SENTENCE) OR ANY TRANSACTION CONTEMPLATED HEREBY, AND AGREES TO COMMENCE ANY SUCH ACTION, SUIT OR PROCEEDING ONLY IN SUCH COURTS; PROVIDED, HOWEVER, THAT UPON THE OCCURRENCE OF AN EVENT OF DEFAULT WITH RESPECT TO A PARTICULAR PROPERTY, LANDLORD SHALL HAVE THE RIGHT TO ENFORCE ITS LOCAL REMEDIES IN, AND TENANT IRREVOCABLY SUBMITS TO THE JURISDICTION OF, ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE IN WHICH SUCH PROPERTY IS LOCATED. EACH PARTY FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY UNITED STATES REGISTERED MAIL TO SUCH PARTY' S RESPECTIVE ADDRESSES SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUCH ACTION, SUIT OR PROCEEDING. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY IN SUCH COURTS, AND HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH PARTY ACKNOWLEDGES THAT IT HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO A TRIAL BY JURY UNDER THE CONSTITUTION OF THE UNITED STATES AND EACH APPLICABLE STATE. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS LEASE OR ANY OTHER LEASE DOCUMENT OR (b) IN ANY MANNER CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF LANDLORD AND TENANT WITH RESPECT TO THIS LEASE OR ANY OTHER LEASE DOCUMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY, AND THAT EITHER PARTY MAY FILE A COPY OF THIS SECTION 20.6 WITH ANY COURT AS CONCLUSIVE EVIDENCE OF THE CONSENT OF THE OTHER PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY HEREUNDER.

20.7 **Entire Agreement**. This Lease, the Exhibits and the Schedules hereto constitute the entire and final agreement of the Parties with respect to the subject matter hereof, and may not be amended or modified except by an agreement in writing signed by the Parties. Landlord and Tenant hereby agree that all prior or contemporaneous oral or written understandings, agreements or negotiations between the Parties relative to the leasing of the Demised Premises or the execution of this Lease are merged and integrated into, and revoked and superseded, by this Lease.

20.8 **Headings**. All titles and headings to sections, subsections, paragraphs or other divisions of this Lease are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other contents of such sections, subsections, paragraphs or other divisions, such other content being controlling as to the agreement among the Parties.

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20.9 **Counterparts**. This Lease may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

20.10 **Interpretation**. Each of Landlord and Tenant has been represented by counsel and this Lease and every term and provision hereof have been freely and fairly negotiated. Consequently, no provisions of this Lease shall be construed against any Party because such Party prepared this Lease or any earlier draft hereof. In the event that the date on which Landlord or Tenant is required to take any action under the terms of this Lease is not a Business Day, the applicable action shall be taken on the next succeeding Business Day.

20.11 **Time of Essence**. TIME IS OF THE ESSENCE WITH RESPECT TO:

(a) THE REQUIREMENT FOR TENANT TO DELIVER A SEVERED LEASE AND SEVERED LEASE ANCILLARY DOCUMENTS BY THE LEASE SEVERANCE DEADLINES PURSUANT TO SECTION 1.9; PROVIDED THAT THE FOREGOING SHALL NOT LIMIT THE APPLICABLE NOTICE AND CURE PERIOD SET FORTH IN SECTION 13.1(m).

(b) THE EXERCISE BY TENANT OF TENANT' S FIRST OFFER RIGHT, MODIFIED ROFO RIGHT AND/OR ROFO RIGHT, AS APPLICABLE, PURSUANT TO SECTION 1.9(g) AND Schedule 1.9(g), AND, UPON ANY SUCH EXERCISE, THE COMPLIANCE BY TENANT WITH ALL TIME FRAMES SET FORTH IN Schedule 1.9(g) RELATING THERETO;

(c) THE EXERCISE BY TENANT OF TENANT' S RENEWAL OPTION PURSUANT TO SECTION 1.3; AND

(d) THE TIME FRAMES SET FORTH IN ARTICLE XIII FOR THE PERFORMANCE BY TENANT OF ITS OBLIGATIONS UNDER THIS LEASE PRIOR TO THE OCCURRENCE OF AN EVENT OF DEFAULT.

20.12 **Further Assurances**. Each Party agrees to execute, acknowledge and deliver to the other Party and/or such other Persons as such Party may request, all documents reasonably requested by such Party to give effect to the provisions and intent of this Lease.

20.13 **Acceptance of Surrender**. Notwithstanding anything to the contrary in this Lease, no surrender by Tenant to Landlord of all or any portion of any Demised Premises shall be valid or effective unless and until Landlord has (in writing) agreed to and accepted such surrender in Landlord' s sole discretion (except to the extent otherwise expressly set forth in this Lease), and no act by Landlord or any representative or agent of Landlord, other than such a written agreement and acceptance by Landlord, shall constitute an agreement to or acceptance of any such surrender.

20.14 **Non-Waiver**. The failure of Landlord to insist, in any one or more instances, upon a strict performance of any of the covenants, conditions, terms or provisions of this Lease, or to exercise any election, option, right or remedy herein contained (collectively, "**Lease Provisions**"), shall not be construed as a waiver or a relinquishment of such Lease Provisions or as a waiver or a relinquishment for the future of any of the same or any other Lease Provisions, Tenant hereby

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acknowledging and agreeing that all Lease Provisions shall thereafter continue and remain in full force and effect. Neither the receipt by Landlord of any Rent nor the payment of any Rent by Tenant, whether or not Landlord has knowledge of Tenant' s breach of any Lease Provisions, shall be deemed to be or construed as a waiver of such breach. No waiver by Landlord of any Lease Provisions shall be deemed or construed to have been made unless expressed in writing and signed by Landlord.

20.15 **Accord and Satisfaction**. Without limiting the foregoing provisions of Section 20.14, no payment by Tenant or receipt by Landlord of an amount less than the full amount of the Rent shall be deemed to be other than on account of the earliest stipulated or required payments of Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or confirmation of any wire transfer or ACH or other payment as Rent be deemed to be or construed as an accord and satisfaction, and Landlord may accept such check, wire transfer, ACH or other payment without prejudice to Landlord' s right to recover the balance of such Rent (with late charges and interest as provided herein) or exercise and/or enforce any other right or remedy under this Lease, at law or in equity.

20.16 **No Recording of this Lease; Memoranda of Lease**.

(a) Neither Party shall record this Lease without the written consent of the other Party in its sole discretion.

(b) Promptly upon either Party' s request, the other Party shall execute, deliver and record, file or register such instruments and other documents as may be required or permitted under applicable Legal Requirements in order to evidence the respective interests of Landlord and Tenant in all or any portion of any Demised Premises (including a memorandum of this Lease and/or a memorandum memorializing any amendment or supplement hereto or thereto or any removal or substitution of any Demised Premises in accordance with the terms and provisions hereof).

20.17 **Liens**. Without limiting Tenant' s right to conduct any Work (including, without limitation, any TO Separation Work and/or other Alterations) in accordance with (and subject to) the express provisions of this Lease, Tenant shall not (and shall have no power to) commit any act or enter into any agreement that may create or be the foundation for any lien, mortgage or other encumbrance upon Landlord' s right, title and interest in and to any Demised Premises or Property, or upon or in the Leased Improvements or other buildings or improvements now or hereafter located thereon, it being agreed that if Tenant performs (or causes to be performed) any Work or makes (or causes to be made) any Alterations or repairs with respect to any Demised Premises, or causes any material to be furnished or labor to be performed therein or thereon, then in each case neither Landlord nor such Demised Premises, Property or buildings or improvements shall under any circumstances be liable for the payment of any cost or expense thereof or incurred in connection therewith. Without limiting the requirement for Landlord' s consent thereto to the extent such consent is required under the applicable provisions of this Lease, all such repairs, Alterations and other Work shall be made, and all such materials and labor shall be furnished and performed, at Tenant' s sole cost and expense and Tenant shall be solely and wholly responsible to all applicable contractors, laborers and materialmen furnishing, making and/or performing the same, all of which contractors, laborers and materialmen are hereby charged with notice that they must look solely and

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wholly to Tenant and Tenant' s interest in the Demised Premises to secure the payment of any bills for any of the foregoing. In addition to all other rights and remedies of Landlord under this Lease, and subject to the provisions of Section 4.2, in the event that any mechanic' s or materialman' s lien shall be filed against all or any portion of any Demised Premises or Tenant' s interest therein or (to the extent the same results from any Tenant' s Acts) any other portion of any Property or any Common Areas or any Shopping Center with respect thereto, then in each case, except to the extent the same results from any act or wrongful failure to act of Landlord or any Landlord Indemnified Party, Tenant shall promptly discharge such lien, whether by payment of the indebtedness due, by filing a bond (as provided by statute) or by providing a surety bond, in each case, for one hundred ten percent (110%) of the amount of such lien as security therefor (each such action, a "**Bond**"). In the event that Tenant shall fail to Bond any such lien, Landlord may, but shall not be obligated to, in addition to all other rights and remedies of Landlord under this Lease, at law or in equity, Bond such lien on Tenant' s behalf and Tenant shall thereafter immediately pay to Landlord, as Additional Rent, all Costs and Expenses incurred by Landlord in connection therewith (together with interest thereon (or on the portion not theretofore reimbursed, as applicable) at the Default Rate until paid by Tenant in full).

20.18 **Cumulative Remedies**. Each and every one of the rights, remedies and benefits of Landlord under this Lease shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits of Landlord hereunder, at law or in equity.

20.19 **Confidentiality; Press Releases**. Each Party hereby agrees not to disclose any of the terms or provisions of this Lease or any other Lease Document to any Person that is not a Party and not to, without the other Party' s prior written consent (which shall not be unreasonably withheld, conditioned or delayed), issue any press or other media releases or make any public statements relating to the terms or provisions of this Lease; provided, however, that either Party may make necessary disclosures to its employees, officers, partners, shareholders, members, directors, managers and representatives and to existing and potential lenders, rating agencies, investors, purchasers, subtenants, assignees, attorneys, advisors, consultants, accountants and Governmental Authorities and/or such disclosures as may be required pursuant to any applicable Legal Requirements or court orders, so long as each such Person agrees to keep all of the terms of this Lease strictly confidential to the maximum extent practicable (except, for the avoidance of doubt, to the extent disclosure may be otherwise required pursuant to such Legal Requirements or court orders).

20.20 **Authority**. Each Party hereby represents and warrants to each other Party that the Person(s) executing this Lease on behalf of such Party have been duly authorized by all requisite corporate or other action of such Party, as the case may be, so that this Lease shall be binding upon and enforceable against such Party in accordance with its terms, except as the same may be limited by general equitable principles or the effect of any Bankruptcy Laws. Each Party hereby agrees to furnish to the other Party, from time to time upon such other Party' s request, such written proof of such authorization as such Party may reasonably request.

20.21 **Books and Records; Reporting; Management Meetings**.

(a) Tenant shall (i) keep adequate records and books of account with respect to the finances and business of Tenant generally in accordance with GAAP (it being agreed that

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Property-level records will not be kept in accordance with GAAP and that 4 Wall EBITDAR and 4 Wall EBITDA are non-GAAP measures), (ii) subject to the execution and delivery of a non-disclosure agreement on the Approved NDA Form covering Tenant Confidential Information, permit Landlord and any Landlord Lender by their respective agents, accountants and attorneys, upon reasonable advance Notice to Tenant, to visit Tenant' s central office to examine (and make copies of) such records and books of account at such reasonable times as may be requested by Landlord (provided, however, that absent a Disabling Event, the foregoing right shall not be exercised more than twice per calendar year) (it being agreed that the provisions of this clause (ii) shall not apply in any Severed Lease), and/or (iii) subject to the execution and delivery of a non-disclosure agreement on the Approved NDA Form, upon Landlord' s request, provide Landlord with copies of any of the foregoing information to which Landlord would be entitled in the course of any such personal visit. Notwithstanding anything to the contrary in the foregoing, on such dates and at such times as the Parties shall reasonably agree from time to time, but not less frequently than twice per calendar year, Tenant shall cause a Financial Officer of Tenant' s Parent and such other senior officers and management personnel of the Tenant Parties as Landlord may reasonably request (and subject to such personnel' s availability), to meet with representatives of Landlord (either in person or by videoconference) to discuss in reasonable detail the finances and business operations of the Tenant Parties with respect to the Properties (it being agreed that the foregoing requirement shall not apply in any Severed Lease) (the foregoing, Landlord' s "**Management Meeting Rights**").

(b) (i) Within ninety (90) days (or, in the case of the Fiscal Year ending on January 30, 2021, one hundred twenty (120) days) after the end of each Fiscal Year, commencing with the Fiscal Year ending on January 30, 2021, Tenant shall deliver to Landlord the Annual Financial Statements with respect to such Fiscal Year, and (ii) within forty-five (45) days (or, in the case of the first two fiscal quarters ending after the Commencement Date, sixty (60) days) after the end of each fiscal quarter (except for the last fiscal quarter of each Fiscal Year), commencing with the fiscal quarter ending in April 2021, Tenant shall deliver to Landlord the Quarterly Financial Statements for such fiscal quarter. All such Annual Financial Statements and Quarterly Financial Statements shall be prepared in accordance with the form and content requirements required pursuant to the ' 33 Act or the ' 34 Act and the rules and regulations of the Securities and Exchange Commission (the "**SEC**") thereunder to the extent that Landlord or its direct or indirect parent is required to file or furnish them with the SEC in accordance with the rules and regulations under the ' 33 Act or the ' 34 Act. All such Annual Financial Statements shall be accompanied by an opinion of the applicable Acceptable Accounting Firm stating that (A) there are no qualifications as to the scope of its audit of such Annual Financial Statements and (B) that such audit was performed in accordance with GAAP. In addition, all such Quarterly Financial Statements and Annual Financial Statements shall be accompanied by a certification executed by a Financial Officer of Tenant' s Parent stating that, as of the applicable date, the Lease Guarantors are in compliance with the Guarantor Financial Covenants (except as otherwise specified therein), and otherwise in the form of **Exhibit C** attached hereto (a "**Covenant Compliance Certification**"). Notwithstanding the foregoing, during any time that Tenant' s Parent is a public reporting company and timely files with the SEC (and promptly thereafter provides Landlord with copies of), for the applicable reporting periods, its Form 10-K, Form 10-Q and other required filings under the ' 34 Act, and any other applicable Legal Requirements, the foregoing requirements solely with respect to Tenant' s delivery of Annual Financial Statements and Quarterly Financial Statements shall be waived; provided, however, that Tenant shall (notwithstanding such waiver) continue to deliver Covenant Compliance Certifications to Landlord as and when the same would otherwise be required pursuant to the immediately preceding sentence.

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(c) Tenant shall further deliver to Landlord the following additional financial information, in each case, in the form, requiring the information and containing the Stratifications set forth on **Schedule 20.21-A** (the "**Reporting Package**"):

(i) within sixty (60) days following the end of each Fiscal Year, all financial information which is to be provided annually pursuant to the Reporting Package; and

(ii) within forty-five (45) days following the end of each fiscal quarter, all financial information which is to be provided quarterly pursuant to the Reporting Package.

Notwithstanding anything to contrary herein or in the form of Reporting Package:

(A) The four (4) stratifications (each, a "**Stratification**") set forth in the Reporting Package with respect to each of "Tenant' s Sales Per Square Foot Tier" and "EBITDAR / Rent Tier" shall be reduced to (A) three (3) from and after the date (if any) that the aggregate number of Properties then subject to this Lease is less than one hundred (100), (B) two (2) from and after the date (if any) that the aggregate number of Properties then subject to this Lease is less than seventy-five and (C) one (1) from and after the date (if any) that the aggregate number of Properties then subject to this Lease is less than fifty (50), such that at all times no individual Stratification in any Reporting Package shall cover less than twenty-five (25) Properties (unless the aggregate number of Properties then subject to this Lease is less than twenty-five (25), in which case the applicable Reporting Package shall, subject to Section 20.21(f), cover such then remaining Properties in one (1) single Stratification); and

(B) Tenant shall not be required to provide any information required to be included in the Reporting Package on a "Trailing Twelve Months" basis prior to the first day following the last day of the fiscal period ending in January 2022, Tenant hereby acknowledging that it shall commence delivery of such information on a "Trailing Twelve Months" basis from and after such date for the duration of the Term, subject to the terms and conditions of this Lease.

(d) Tenant shall further deliver to Landlord the following additional information:

(i) (A) within forty-five (45) days following the end of each fiscal quarter, quarterly statements of 4-Wall EBITDAR, Sales Per Square Foot, 4-Wall EBITDA and 4-Wall EBITDA margin with respect to each Property, which in each case shall (1) be delivered in Microsoft Excel format and otherwise be consistent with past practice, (2) set forth in comparative form the respective figures for the corresponding period or periods of the previous Fiscal Year and (3) be certified by a Financial Officer of Tenant pursuant to an Officer' s Certificate;

(ii) within sixty (60) days following the end of each Fiscal Year (and, during the existence of a Disabling Event, within forty-five (45) days following the end of

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each fiscal quarter) a detailed schedule of Operating Expenses with respect to each Property (but solely to the extent such Operating Expenses relate to or are incurred in connection with the ownership and/or operation of the real estate at such Property and not, for the avoidance of doubt, the operation of Tenant' s business operations at such Property), which in each case shall (1) be delivered in Microsoft Excel format and otherwise be consistent with past practice, (2) set forth in comparative form the respective figures for the corresponding period or periods of the previous Fiscal Year and (3) be certified by a Financial Officer of Tenant pursuant to an Officer' s Certificate;

(iii) prompt Notice (after the Financial Officer or other executive officer of Tenant or Tenant' s Parent obtains actual knowledge of the same) of (A) any material adverse change in the financial condition of the Properties, taken as a whole, (B) any default by Tenant or any of its Affiliates or Related Users under a Property Document that could result in the termination of such Property Document or receipt of written notice from a counterparty as to the termination of such Property Document, and/or and (C) any termination or cancellation of any insurance that Tenant is required to obtain and maintain hereunder;

(iv) within forty-five (45) days following the end of each fiscal quarter of each Fiscal Year, the Permitted Sublease Reports required pursuant to Section 9.2; and

(v) as promptly as reasonably practicable, all such other financial statements and other financial information as Landlord may reasonably request, including to enable Landlord to comply with all voluntary and mandatory financial reporting obligations of Landlord under all applicable Legal Requirements and/or under any Landlord Financing Documents, provided, however, that (A) Landlord reimburses Tenant for any additional cost or expense incurred by Tenant to comply with the foregoing, (B) such financial statements and financial information can be produced without material burden to Tenant (it being agreed that Tenant shall not be required to change in any material respect any of its accounting systems or practices in order to provide such other financial statements or other financial information), (C) to the extent that any information or financial statements requested by Landlord under this clause (v) relates to any pending or prospective Property Sale, to Landlord' s compliance with any applicable Legal Requirements or to any applicable Landlord Financing Documents, Tenant shall have the burden of proof with respect to any dispute by Tenant that such request is unreasonable and (D) to the extent that any information or financial statements requested by Landlord under this clause (v) relates to any matter not described in the foregoing subclause (C), Landlord shall have the burden of proof with respect to any dispute by Tenant that such request is unreasonable. Any dispute over the reasonableness of a request for information under this clause (v) shall be resolved pursuant to the binding arbitration provisions of Section 27.1.

(e) Landlord shall keep all financial information delivered by the Tenant Parties to Landlord that the Tenant Parties determine is commercially sensitive non-public information (including, without limitation, any information related to the profitability of a particular Store, information contained in the Required Capex Plans, and information that can compromise Tenant' s ability to negotiate with vendors, suppliers and other third parties with whom Tenant has or might have a business relationship, including, for the avoidance of doubt, the information contained in

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the Covenant Compliance Certifications, the Permitted Sublease Reports and the information required to be disclosed pursuant to clauses (i)-(iii) and (v) of Section 20.21(d) (except, in each case, to the extent that any such information is disclosed as a part of the Financial Statements or the Reporting Package)) (collectively, "**Tenant Confidential Information**") strictly confidential and Landlord shall not share or disclose such Tenant Confidential Information except, in each case: (i) to the Trust, Trustee, Trust Certificateholders, prospective purchasers of Trust Certificates and to any officers, directors, members, Affiliates, employees, agents and representatives of the foregoing or of Landlord, provided, in each case, that each such Person or Persons agree in writing to be bound by the provisions of this Section 20.21(e) and (except with respect to the Trust Certificateholders or prospective purchasers of Trust Certificates) executes a non-disclosure agreement in substantially the form attached hereto as **Exhibit D** (the "**Approved NDA Form**"); (ii) to Landlord' s, the Trust' s, Trustee' s, Trust Certificateholders' or any of its or their Affiliates' agents, accountants, auditors, attorneys, financial advisors, managers and existing or prospective lenders, investors or purchasers, or to any rating agency or the attorneys, consultants or advisors to any lender, rating agency, trustee, underwriter or the holders of any bonds or pass-through certificates, in each case, in connection with any securitization and/or sale of any Indebtedness evidenced by any Landlord Financing Documents, provided, in each case, that each such Person or Persons agree in writing to be bound by the provisions of this Section 20.21(e) and (except in the case of a rating agency or the Trust Certificateholders or prospective purchasers of Trust Certificates) executes a non-disclosure agreement in substantially the form of the Approved NDA Form; (iii) to the extent that any Tenant Party has made such information public; (iv) to the extent that Landlord is required pursuant to any Legal Requirement, court order or other legal process to share or disclose such Tenant Confidential Information (provided, however, that Landlord shall provide the applicable Tenant Party with Notice of and an opportunity to limit or contest (in full compliance with all applicable Legal Requirements) any such legally-compelled disclosure (other than any required disclosure pursuant to the federal securities laws (including, without limitation, the ' 34 Act or the ' 33 Act)); or (v) to the extent that the Trustee is required to disclose such Tenant Confidential Information pursuant to the federal securities laws (including, without limitation, the ' 34 Act or the ' 33 Act); provided, however, that Tenant hereby acknowledges and agrees, on its behalf and on behalf of the other Tenant Parties, that in no event shall any of the following (or the information contained therein) constitute Tenant Confidential Information: (A) the Financial Statements and (B) the Reporting Package. For the avoidance of doubt, nothing in this Lease shall limit Landlord' s or any of its Affiliates' right to file, furnish or disclose any information received under this Section 20.21 as required pursuant to any federal securities laws (including, without limitation, the ' 34 Act or the ' 33 Act). Tenant shall cause the Acceptable Accounting Firm conducting each audit of Tenant' s Parent' s Annual Financial Statements to consent in writing to the Trustee' s inclusion of such audit and any report prepared by such Acceptable Accounting Firm in connection therewith in any filings made by the Trustee on behalf of the Trust pursuant to the ' 34 Act or the ' 33 Act. Notwithstanding anything to the contrary herein, no Tenant Party shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (x) constitutes non-financial trade secrets or non-financial proprietary information (subject to the provisos in clause (iv) and clause (v) of this Section 20.21(e) and specifically excluding the Financial Statements, the Reporting Package and the financial statements, certifications and/or other information described in clause (i) through clause (iv) of Section 20.21(d) of this Lease), (y) in respect of which disclosure to Landlord (or its representatives or contractors) is prohibited by law or (z) is subject to attorney-client or similar privilege or constitutes attorney work product.

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(f) Notwithstanding anything to the contrary contained herein, from and after the date (if any) as of which the aggregate annual Base Rent Allocation Amounts of the Properties then subject to this Lease is less than Five Million Dollars ($5,000,000), Tenant' s obligations pursuant to this Section 20.21 shall be modified as follows:

(i) Landlord' s right to visit Tenant' s central office to examine and make copies of Tenant' s records and books of account in accordance with Section 20.21(a) shall be limited to once per calendar year, unless a Disabling Event then exists (in which event such once per year limit shall no longer apply);

(ii) Landlord shall not have Management Meeting Rights unless a Disabling Event then exists (in which event Landlord may require the resumption of Management Meeting Rights); and

(iii) Tenant shall not be required to deliver any financial statements or other financial reporting to Landlord pursuant to this Section 20.21 other than the following:

(1) the Financial Statements,

(2) the Covenant Compliance Certifications,

(3) the information required under each of clause (d)(iii)(B), clause (d)(iii)(C), clause (d)(iv) and clause (d)(v) of this Section 20.21;

(4) annual statements of 4-Wall EBITDAR and Sales Per Square Foot with respect to each Property then subject to this Lease, which statements shall be delivered to Landlord within sixty (60) days following the end of each Fiscal Year and otherwise prepared in compliance with clause (d)(i) of this Section 20.21;

(5) Required Capex Plans; and

(6) any additional information that may be required to enable Landlord to comply with any voluntary or mandatory financial reporting obligations of Landlord under all applicable Legal Requirements (including, without limitation, the federal securities laws).

20.22 **CPI Adjustment**. Solely with respect to specified dollar baskets and thresholds under this Lease (including, without limitation, the Alterations Threshold, the Restoration Threshold, the Outstanding Alterations Payables Threshold and the Reference Net Worth) (and not with respect to the Base Rent or the limits of the insurance required to be maintained pursuant to Article XI hereof), such baskets and thresholds shall be adjusted every five (5) years on the anniversary of the Commencement Date by multiplying the applicable amount by the greater of (a) 1.0, or (b) a fraction, the numerator of which shall be the CPI as most recently published prior to the date of such adjustment and the denominator of which shall be the CPI for the month in which the Commencement Date occurs.

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20.23 **Intended Lease Treatment**. Landlord and Tenant intend that, with respect to each Property, this Lease constitutes (a) an operating lease and not a financing for financial accounting purposes and (b) a lease for U.S. federal income tax purposes (together, the "**Intended Lease Treatment**"). If either Landlord or Tenant determine that this Lease cannot be treated consistent with the Intended Lease Treatment with respect to one or more Properties, the Parties shall cooperate to amend the terms of this Lease with respect to the relevant Properties, including changing the Initial Term with respect to such Properties, solely to the extent necessary to treat this Lease consistent with the Intended Lease Treatment with respect to such Properties. Notwithstanding the foregoing, neither Party shall be required to amend any term of this Lease if the change(s) would have a material adverse effect on such Party.

20.24 **State-Specific Provisions**. The State Specific Provisions shall be deemed a part of and included within the terms and provisions of this Lease. None of the State Specific Provisions shall be deemed to limit the choice of law provisions set forth in Section 20.5. In the event of any conflict or inconsistency between the terms of the State Specific Provisions and the other terms and conditions of this Lease as the same pertain only to the Properties located in the relevant State, the terms and conditions of the State Specific Provisions shall control and be binding with respect to such Properties.

ARTICLE XXI
BROKERS

21.1 **Brokers**. Tenant hereby represents and warrants that it has not had any contact or dealings with any real estate broker, agent or finder or other similar Person (a "**Broker**") that would give rise to any obligation to pay such Broker any fee, brokerage commission or other payment in connection with this Lease, and Tenant shall indemnify, protect, hold harmless and defend Landlord and all other Landlord Indemnified Parties from and against any claims, liabilities, damages, fees, costs and expenses, including reasonable attorneys' fees and expenses and court costs (including any of the foregoing that may be incurred in the enforcement of this Section 21.1) with respect to any obligation to pay a Broker any such fee, brokerage commission or other payment to the extent such obligation arises out of any act or omission of Tenant. Landlord hereby represents and warrants that it has not had any contact or dealings with any Broker that would give rise to any obligation to pay such Broker any fee, brokerage commission or other payment in connection with this Lease, and Landlord shall indemnify, protect, hold harmless and defend Tenant and the other Tenant Indemnified Parties from and against any claims, liabilities, damages, fees, costs or expenses, including reasonable attorneys' fees and expenses and court costs (including any of the foregoing that may be incurred in the enforcement of Section 21.1) with respect to any obligation to pay a Broker any such fee, brokerage commission or other payment to the extent such obligation arises out of any act or omission of Landlord.

ARTICLE XXII
ANTI-TERRORISM

22.1 **Anti-Terrorism Representations**.

(a) Each Party hereby represents and warrants that neither such Party, nor, to such Party' s knowledge, any Persons (other than shareholders of a publicly traded company or

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certificateholders of a registered trust) holding any legal or beneficial interest whatsoever in such Party, is (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("**OFAC**"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons" (collectively, "**Prohibited Persons**").

(b) Each hereby represents and warrants to the other Party that no funds tendered to such other Party under the terms of this Lease are or will be directly or, to such first Party' s knowledge, indirectly derived from activities that may contravene U.S. federal, state or international laws and regulations, including anti-money laundering laws.

(c) Neither Party shall engage in any transactions or dealings, or otherwise be associated, with any Prohibited Persons during the Term.

(d) In the event that any of the foregoing representations or warranties is untrue, or any of the foregoing covenants is breached, at any time during the Term and any Indemnified Party suffers or incurs any damages, losses, claims or liabilities as a result thereof, the same shall constitute a Landlord Indemnified Matter or a Tenant Indemnified Matter, as applicable, pursuant to Article XV.

ARTICLE XXIII
FAIR MARKET RENT DISPUTES

23.1 **Fair Market Rent Disputes**. Within ten (10) Business Days after the delivery of a Fair Market Rent Dispute Notice pursuant to Section 1.3(c), each of Landlord and Tenant shall attempt to agree on the Fair Market Rent. Failing such agreement as to the Fair Market Rent for any applicable Demised Premises, the Fair Market Rent shall be determined in the following manner:

(a) Within twenty (20) days of the date of any Fair Market Rent Dispute Notice, Landlord and Tenant shall endeavor to select jointly a single appraiser ("**Single Appraiser**"), who shall then render an appraisal and the rent so determined shall be the Fair Market Rent for the applicable Demised Premises.

(b) If Landlord and Tenant are unable timely to agree on a Single Appraiser, then within thirty (30) days of the Fair Market Rent Dispute Notice, Landlord and Tenant shall each select an appraiser, and the two so chosen shall select a third appraiser (or, if the two so chosen cannot agree on a third appraiser, the third appraiser shall be designated by the American Society of Appraisers). Each of such three appraisers shall render an appraisal, and the Fair Market Rent shall be determined by the average of the two appraisals which are closest to each other in dollar amount.

(c) If a Single Appraiser is chosen, the expenses of the appraisal shall be equally divided between Tenant and Landlord. Tenant and Landlord shall each bear the expenses of whichever of the respective two appraisers was selected by it, and the expenses of the third appraiser shall be equally divided between Tenant and Landlord.

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(d) All appraisers shall be members of the Appraisal Institute of the American Society of Appraisers, shall have no "disqualifying interests" as defined in Schedule 7.3(d), and have at least ten (10) years of experience appraising commercial properties comparable to the applicable Demised Premises.

(e) Each of Landlord and Tenant shall be obligated, promptly after receipt of the valuation report prepared by the appraiser appointed by it, to deliver a copy of such valuation report to the other party in the manner provided in Article 19. At the time of appointment, the third appraiser shall be directed to promptly deliver copies of his valuation report to both Landlord and Tenant in the manner provided in Article 19. Time is of the essence of the appraisal process described herein. All appraisers described herein must deliver their appraisal reports within ninety (90) days of the date of delivery of the Fair Market Rent Dispute Notice. Notwithstanding anything herein to the contrary, any appraisals delivered after that date shall not be taken into account and appraisals that are timely obtained are the only appraisals that shall be taken into account.

(f) The provisions of this Section 23.1 shall be specifically enforceable to the extent such remedy is available under applicable Legal Requirements, and any final determination of any Fair Market Rent in accordance with such provisions shall be final and binding among the Parties except to the extent such result is prohibited by applicable Legal Requirements.

ARTICLE XXIV
ESTOPPEL CERTIFICATES

24.1 **Estoppel Certificates**.

(a) During the Term, Tenant shall, within twenty (20) days after request therefor by Landlord, execute, acknowledge and deliver to Landlord, any Landlord Lender or any other Person designated by Landlord, an Estoppel Certificate (which shall expressly provide that it may be relied upon by such Person and its successors and assigns).

(b) During the Term, Landlord shall, within twenty (20) days after request therefor by Tenant, execute, acknowledge and deliver to Tenant, any lender of a Tenant Party or any other Person designated by Tenant, an Estoppel Certificate (which shall expressly provide that it may be relied upon by such Person and its successors and assigns).

ARTICLE XXV
SURRENDER OF DEMISED PREMISES

25.1 **Surrender of Demised Premises**. Upon the expiration or earlier termination of this Lease with respect to all or any portion of any Demised Premises, whether on the Expiration Date with respect to the entire Demised Premises, on any Property Termination Date with respect any individual Demised Premises or otherwise, Tenant shall surrender and deliver the applicable Demised Premises to Landlord (a) vacant and free from all subtenants, licensees or other occupants (other than pursuant to the TBA Leases as in effect on the date hereof or pursuant to subleases for which Landlord has granted a Subtenant SNDA), (b) in at least the same condition as the condition

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of such Demised Premises on the Commencement Date or, if such Demised Premises is a Replacement Property, as of the applicable Substitution Date, in each case, ordinary wear and tear excepted and except as repaired, restored, altered or added to as permitted or required by the provisions of this Lease, (c) in compliance in all material respects with all applicable Property Requirements, (d) with all Tenant' s Property and all Alterations (other than Permissible Alterations that Tenant elects not to remove) removed, and with such Demised Premises repaired and restored in accordance with the terms hereof following any such removal and (e) free and clear of all Encumbrances first arising after the Commencement Date, other than Permitted Encumbrances (except for any Excepted Liens not Bonded by Tenant, Tenant hereby acknowledges that Tenant shall in all events remain liable for the discharging or Bonding of all Excepted Liens in accordance with the terms of this Lease) (the foregoing, collectively, the "**Required Return Condition**"). Notwithstanding the foregoing, solely to the extent that any such termination of this Lease results from a Casualty or a Condemnation, the foregoing clauses (b), (c) and (d) shall not apply to the portion of the applicable Demised Premises affected by such Casualty or Condemnation and Tenant' s obligations with respect thereto shall instead be as provided in Article XII.

ARTICLE XXVI
TENANT BANKRUPTCY

26.1 **Tenant Bankruptcy**.

(a) As a material inducement to Landlord executing this Lease, Tenant hereby acknowledges and agrees that Landlord is relying upon (i) the financial condition and specific operating experience of the Tenant Parties and Tenant' s obligation to use the Demised Premises specifically for the Permitted Use and (ii) Tenant' s timely performance of all of its obligations under this Lease notwithstanding the entry of an order for relief under the Bankruptcy Code for Tenant.

(b) Accordingly, in consideration of the mutual covenants contained in this Lease and for other good and valuable consideration, the receipt and sufficiency of which Tenant hereby acknowledges, Tenant hereby agrees that:

(i) Any and all Rent that accrues or becomes due from and after any such Insolvency Event and that is not paid as required under this Lease shall, in the amount of such Rent, constitute administrative expense claims allowable under the Bankruptcy Code with priority of payment at least equal to that of any other actual and necessary expenses incurred after the occurrence of such Insolvency Event;

(ii) Any assignment of this Lease must result in all terms and conditions of this Lease being assumed by the assignee without alteration or amendment unless Landlord otherwise consents in writing to such alteration or amendment;

(iii) Any proposed assignment of this Lease to an assignee in violation of the provisions of Article IX shall be harmful and prejudicial to Landlord;

(iv) The rejection (or deemed rejection) of this Lease for any reason whatsoever shall constitute a Major Event of Default;

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(v) No provision of this Lease shall be deemed to constitute a waiver of any of Landlord' s rights or remedies under any Bankruptcy Laws to oppose any assumption and/or assignment of this Lease, to require timely performance of Tenant' s obligations under this Lease, or to regain possession of all or any Demised Premises as a result of an Event of Default or Major Event of Default (as applicable);

(vi) Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as such, shall constitute "rent" for the purposes of the Bankruptcy Code and any other Bankruptcy Laws; and

(vii) For purposes of this Section 26.1, with respect to all rights and obligations of Landlord and Tenant in connection with any Insolvency Event, the term "Tenant" shall include Tenant' s successor in bankruptcy, whether a trustee, Tenant as debtor in possession or other responsible person.

ARTICLE XXVII
ALTERNATIVE DISPUTE RESOLUTION–EXPEDITED ARBITRATION

27.1 **Binding Arbitration**. All disputes, claims or controversies arising under this Lease between the Parties with respect to whether Landlord has granted or withheld (or failed to grant or withhold) its consent or approval to any matter in violation of the applicable terms and provisions of this Lease (each, a "**Consent Dispute**"), and all other disputes, claims or controversies arising under this Lease between the Parties that, by the terms of this Lease, are stated to be resolved by arbitration pursuant to this Section 27.1 (together with Consent Disputes, each a "**Dispute**"), shall be addressed and resolved in accordance with the following binding arbitration procedures, and no other claim shall be brought in any court or under other dispute resolution process, and no other remedy shall be sought to be exercised by the Parties with respect to the subject matter of any such Dispute:

(a) The arbitration of such Dispute shall be conducted pursuant to the Expedited Procedures of the Commercial Arbitration Rules ("**Arbitration Rules**") of the American Arbitration Association ("**AAA**") in New York, New York.

(b) Such arbitrator shall be a disinterested party, selected from a current AAA list using then current AAA-recommended selection method or by the Parties, using the so-called "Corcoran" selection method, if so requested by any Party.

(c) After his or her appointment, such arbitrator shall hold a conference with the Parties with respect to such Dispute as soon as practicable (but in any event within five (5) days of such appointment) to define and narrow the issues and claims to be arbitrated, to define and limit discovery and to identify the form of evidence to be presented. All such discovery shall be completed within five (5) Business Days of said conference.

(d) Any arbitration shall be conducted by such arbitrator under the guidance of the Federal Rules of Civil Procedure and the Federal Rules of Evidence, as modified by the Arbitration Rules, but such arbitrator shall not be required to comply strictly with such rules in conducting any such arbitration.

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(e) Such arbitrator shall conduct such evidentiary or other hearings (not to exceed two (2) days) as such arbitrator shall deem necessary or appropriate, and thereafter shall make a determination as soon as practicable and in no event later than fourteen (14)-days following the conclusion of such hearings.

(f) A full and complete record of such arbitration shall be maintained, and the decision of such arbitrator shall be accompanied by detailed written findings of fact and conclusions of law of the arbitrator.

(g) Unless otherwise determined by the arbitrator, the non-prevailing Party in such arbitration shall bear the Costs and Expenses of the Parties in connection therewith.

(h) In no event shall such arbitrator award or determine that any Party shall be entitled to (i) any indirect, speculative or consequential damages (including, without limitation, damages with respect to any lost profits) or (ii) subject to the foregoing clause (g), any other damages or compensation except (solely with respect to this clause (ii)) to the extent that such arbitrator determines that Landlord acted in bad faith in withholding its consent in violation of the applicable terms and provisions of this Lease in connection with the subject matter of a Consent Dispute.

(i) The Parties shall keep all such arbitration proceedings strictly confidential, except to the extent that disclosure is required by applicable Legal Requirements.

(j) Such arbitrator may make and grant interim and interlocutory awards and relief, including injunctive relief, which shall not be subject to appeal.

(k) The final award by such arbitrator shall be final and binding on the Parties and shall not be subject to appeal, and judgment on the award may be entered in any court of competent jurisdiction.

(l) In the case of any conflict between a term or condition of this Lease and a term or condition of the Arbitration Rules, the terms and conditions of this Lease shall govern and control in all respects to the fullest extent permissible under applicable Legal Requirements.

ARTICLE XXVIII
REIT PROTECTION

28.1 **REIT Protection**.

(a) The Parties intend that the Rent and all other amounts paid by Tenant under this Lease shall qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto and this Lease shall be interpreted consistently with this intent.

(b) Notwithstanding anything to the contrary contained in this Lease, Tenant shall not, without Landlord' s prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed): (i) sublet, assign or enter into a management arrangement for all or any portion of any Demised Premises on any basis such that the rental or other amounts to

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be paid by the subtenant, assignee or manager thereunder would be based, in whole or in part, on either (A) the net income or profits derived by the business activities of the subtenant, assignee or manager or (B) any other formula or allocation such that, in each case, any portion of any amount received by Landlord (or received or deemed to be received for U.S. federal income tax purposes by any member of Landlord (or any Affiliate of any member of Landlord)) would fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto; (ii) furnish or render any services to the subtenant, assignee or manager or manage or operate all or any portion of any Demised Premises so subleased, assigned or managed if the same would reasonably be expected to cause any portion of any amount received by Landlord (or received or deemed to be received for U.S. federal income tax purposes by any member of Landlord (or any Affiliate of any member of Landlord)) to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto; or (iii) sublet, assign or enter into a management arrangement for all or any portion of any Demised Premises in any manner which could cause any portion of the amounts received by Landlord (or received or deemed to be received for U.S. federal income tax purposes by any member of Landlord (or any Affiliate of any member of Landlord)) pursuant to this Lease or any sublease to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto, or which could cause any other income of Landlord or any member of Landlord (or any Affiliate of any member of Landlord) to fail to qualify as income described in Section 856(c)(2) of the Code. The requirements of this Section 28.1(b) shall likewise apply to any further subleasing by any subtenant.

(c) Notwithstanding anything to the contrary contained in this Lease, the Parties acknowledge and agree that Landlord, in its sole discretion, may assign this Lease or any interest herein to another Person (including, without limitation, a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code)) to maintain the status of any member of Landlord (or any Affiliate of any member of Landlord) as a "real estate investment trust" (within the meaning of Section 856(a) of the Code).

(d) Notwithstanding anything to the contrary contained in this Lease, but subject to the provisions of Section 20.21, upon the written request of Landlord, Tenant shall cooperate with Landlord in good faith and at no cost or expense to Tenant, and provide such documentation and/or information as may be in Tenant' s possession or under Tenant' s control and otherwise readily available to Tenant as shall be reasonably requested by Landlord in connection with verification of "real estate investment trust" (within the meaning of Section 856(a) of the Code) compliance requirements. Tenant shall take such reasonable action as may be requested by Landlord from time to time to ensure compliance with the Internal Revenue Service requirement that Rent allocable for purposes of Section 856 of the Code to personal property, if any, at the beginning and end of a calendar year does not exceed fifteen percent (15%) of the total Rent due hereunder as long as such compliance does not (i) increase Tenant' s monetary obligations under this Lease other than to a de minimis extent (unless Landlord agrees to reimburse Tenant for any such increased monetary obligations, in which case this clause (i) shall not apply), (ii) increase Tenant' s non-monetary obligations under this Lease other than to a de minimis extent, or (iii) reduce Tenant' s rights under this Lease other than to a de minimis extent.

[SIGNATURES FOLLOW]

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IN WITNESS WHEREOF, this Lease has been executed and delivered by the Parties effective as of the date first written above.

LANDLORD:

JCPENNEY PUERTO RICO, INC.,
a Puerto Rico corporation

By: /s/ Bill Wafford
Name: Bill Wafford
Title: Chief Financial Officer

J. C. PENNEY CORPORATION, INC.,
a Delaware corporation

By: /s/ Bill Wafford
Name: Bill Wafford
Title: Chief Financial Officer

J. C. PENNEY PROPERTIES, LLC,
a Delaware limited liability company

By: /s/ Dawn Wolverton
Name: Dawn Wolverton
Title: Assistant Secretary

TENANT:

PENNEY TENANT I LLC,
a Delaware limited liability company

By: /s/ Dawn Wolverton
Name: Dawn Wolverton
Title: Assistant Secretary

[Signature Page to Retail Master Lease]

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Exhibit 10.2

EXECUTION VERSION

DISTRIBUTION CENTER MASTER LEASE

by and among

J. C. PENNEY PROPERTIES, LLC and

J. C. PENNEY CORPORATION, INC.,

collectively as Landlord,

and

PENNEY TENANT II LLC,

as Tenant

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DISTRIBUTION CENTER MASTER LEASE

This **DISTRIBUTION CENTER MASTER LEASE** (as the same may be amended, supplemented or replaced from time to time, this "**Lease**") is entered into as of December 7, 2020, by and among **J. C. PENNEY PROPERTIES, LLC**, a Delaware limited liability company, and **J. C. PENNEY CORPORATION, INC.**, a Delaware corporation (individually and/or collectively, as the context may require, together with their respective successors and assigns, "**Landlord**"), and **PENNEY TENANT II LLC**, a Delaware limited liability company (together with its successors and permitted assigns, "**Tenant**").

RECITALS

Capitalized terms used and not otherwise defined in this Lease shall, except as otherwise noted herein, have the respective meanings ascribed to such terms in Article II.

Landlord owns the fee simple estate with respect to those certain six (6) real properties identified on Exhibit A attached hereto, as the same may be amended from time to time in accordance with the provisions of this Lease (each a "**Property**", and collectively, the "**Properties**").

Landlord desires to lease the Demised Premises to Tenant, and Tenant desires to lease the Demised Premises from Landlord, in each case, upon and subject to the terms set forth in this Lease and as a single, unitary, indivisible, composite, and inseparable lease of the entirety of the Demised Premises and not as separate or severable leases governed by similar terms, as more specifically set forth in Section 1.2 and subject, in each case, to Landlord' s right to separate this Lease into one or more Severed Leases in its sole and absolute discretion pursuant to the provisions of Section 1.9 below.

As of the date hereof, each Demised Premises contains a warehouse and distribution center (each, a "**Distribution Center**," and collectively, the "**Distribution Centers**") that was operated by Tenant' s Predecessor or one or more of its Subsidiaries prior to the date hereof and that Tenant shall, upon and subject to the express provisions of this Lease, continue to lease from Landlord from and after the date hereof in accordance with the provisions of this Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
DEMISED PREMISES

1.1 Demised Premises. Upon and subject to the terms and conditions herein set forth, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term all of Landlord' s right, title and interest in and to the following (individually and/or collectively, as the context may require, as one economic unit, and as the same may be modified from time to time in accordance with (and subject to) the terms and provisions of this Lease, the "**Demised Premises**"):

(a) with respect to the Properties, the land on which the Properties are located (collectively, the "**Land**") that does not constitute Excluded Land;

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(b) (i) all buildings, structures and other improvements of every kind now or hereafter located on the Land, including, as applicable, the Distribution Centers, all free-standing buildings and all other buildings and improvements connected thereto, together with (ii) for each Property, all tenements, hereditaments, easements, rights-of-way, and other rights and privileges in and to such Property or applicable Portion thereof, including (A) easements over any adjacent third-party properties and other real property rights granted pursuant to any applicable Property Documents (including any Excluded Land Easements (as defined herein) and Excluded Land Co-Existence Agreements (as defined herein)) and (B) all sidewalks, walkways, alleyways, roadways, connecting tunnels, passageways and entranceways to any such third-party properties, utility pipes, conduits, lines, steam lines, ducts, vaults, gores, service drives, loading docks, bays and platforms, parking aisles, driveways, doorways, parking lots and parking areas appurtenant to such buildings and structures (in each case, to the extent Landlord has any interest in the same) collectively, the "**Leased Improvements**");

(c) all equipment, machinery, fixtures, and other items of real or personal property, including all components thereof, that are now or hereafter located in, on or used in connection with and affixed to or otherwise incorporated into the Land or the Leased Improvements, together with all replacements, modifications, alterations and additions thereof or thereto, including all HVAC equipment, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air- and water-pollution-control, waste-disposal, air-cooling and air-conditioning systems and apparatus, security systems, sprinkler systems and fire- and theft-protection equipment, elevators, lifts, motors, blowers and compressors (collectively, the "**Fixtures**"), all of which, to the greatest extent permitted by law, are hereby deemed by the Parties to constitute real estate, together with all equipment, parts and supplies used to service, repair, maintain and equip the foregoing and all replacements, modifications, alterations and additions thereof or thereto; provided, however, that the foregoing shall exclude all items constituting Tenant' s Property; and

(d) all plans, specifications, drawings, permits, rights and warranties with respect to each Property.

Notwithstanding anything to the contrary contained herein, (A) the Demised Premises shall not include any Excluded Land and, for the avoidance of doubt (1) Tenant shall have no obligation to pay Rent or any utilities, impositions, insurance charges, operating expenses or other similar amounts payable with respect to any portion of the Excluded Land and (2) there shall be no restriction on Landlord' s right to enjoy, sell, finance or, except for any express provision of this Lease applicable thereto, use the Excluded Land, and (B) Landlord leases the Demised Premises to Tenant subject only to the Permitted Encumbrances, it being agreed that Landlord shall not, from and after the Commencement Date, further encumber the Demised Premises (other than under or in connection with any Landlord Financing and/or Landlord Financing Documents, subject to the applicable terms and provisions of Article XIV, or other than encumbrances expressly permitted under this Lease) if such encumbrance would (1) have any material adverse effect on ingress or egress to or from, or the visibility of, the applicable Demised Premises or (2)

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increase in any material respect Tenant' s obligations (unless such increased obligations are monetary and Landlord agrees for itself and its successors and assigns to be responsible for the cost of any such increased obligations), or decrease in any material respect Tenant' s rights, under this Lease, any applicable Property Documents or such encumbrance, in each case without Tenant' s prior written consent, which consent shall be granted or withheld in Tenant' s sole discretion in the case of any encumbrance described in clause (1) above and shall be granted or withheld in Tenant' s commercially reasonable judgment in the case of any encumbrance described in clause (2) above.

1.2 Single, Unitary, Indivisible Lease. This Lease constitutes one single, unitary, indivisible lease of the entirety of the Demised Premises and not separate or severable leases governed by similar terms. The Demised Premises constitutes one indivisible economic unit, and the Base Rent and all other economic and other material lease provisions have been extensively negotiated and agreed to, based on the understanding and agreement of the Parties (and each of the Parties has entered into this Lease in reliance thereon, and it is a material inducement to each of them), that the demise of all of the Demised Premises by Landlord to Tenant herein is a single, unitary, indivisible, composite, and inseparable transaction. Except as otherwise expressly provided in this Lease for specific purposes (and then only to the extent so expressly provided), all provisions of this Lease apply equally and uniformly to the entire Demised Premises as one indivisible unit. Except as otherwise expressly set forth in this Lease, an Event of Default with respect to all or any portion of any Demised Premises shall be an Event of Default as to the entire Demised Premises. Except to the extent otherwise expressly provided in this Lease for specific purposes (including, without limitation, with respect to Landlord' s right to separate this Lease into one or more Severed Leases in its sole and absolute discretion pursuant to the terms of Section 1.9), the Parties intend that this Lease shall be, and the provisions of this Lease shall at all times be construed, interpreted and applied so as to carry out their mutual objective to create, a single, unitary, indivisible lease of the entire Demised Premises and, in particular but without limitation, that, for purposes of 11 U.S.C. Section 365, or any successor or replacement thereof or any analogous state law, or any attempt thereunder to assume, reject or assign this Lease in whole or in part, this Lease is a single, unitary, indivisible and non-severable lease and executory contract dealing with one legal and economic unit and that this Lease must be assumed, rejected or assigned as a whole with respect to the entirety (and only as to the entirety) of the Demised Premises. Notwithstanding anything to the contrary in the foregoing: (a) Landlord may, from time to time, exercise its rights hereunder to terminate this Lease with respect to any Property that becomes a Landlord Option Property; and (b) Landlord may, from time to time, exercise its rights hereunder to sell Severed Properties subject to one or more Severed Leases, in each case, pursuant to the express terms and provisions of this Lease, including, without limitation, Section 1.5 and Section 1.9; provided, however, that no such amendment or removal shall in any way change the single, unitary, indivisible and non-severable nature of this Lease with respect to the Properties remaining subject hereto following any such amendment or removal and all of the foregoing provisions of this Section 1.2 shall thereafter continue to apply in full force with respect thereto. This Lease is separate and distinct from any and all other master leases or other leases now or hereafter entered into between Landlord and Tenant or any of their respective Affiliates, and no breach or default under this Lease, on the one hand, or any such other master leases or leases, on the other hand, shall constitute a breach or default under such other master lease or leases or this Lease, as the case may be.

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1.3 Term; Renewal Terms.

(a) Subject to the provisions of this Lease, Tenant shall have and hold the Demised Premises for an initial term (the "**Initial Term**" and, as extended in connection with one or more Renewal Terms, the "**Term**"), commencing on the date hereof (the "**Commencement Date**") and ending on the last day of the calendar month in which the twentieth (20th) anniversary of the Commencement Date occurs (as the same may be extended in connection with one or more Renewal Terms, the "**Expiration Date**").

(b) The Initial Term of this Lease may be extended at the option of Tenant (each, a "**Renewal Option**") for an aggregate of five (5) consecutive renewal terms of five (5) years each (each, a "**Renewal Term**") with respect to the entirety of the Demised Premises (but not less than the entirety of the Demised Premises (as the Demised Premises is then constituted) then subject to this Lease), in each case if and only if: (i) at least twenty-four (24) months prior to the then current Expiration Date, Tenant delivers to Landlord a Notice, which shall be irrevocable once delivered, that Tenant is exercising its Renewal Option to extend the Term for the ensuing Renewal Term (a "**Renewal Notice**") and (ii) as of both the date on which Landlord receives the Renewal Notice (the "**Renewal Exercise Date**") and the applicable Renewal Term Commencement Date, no Event of Default then exists.

(c) Within twenty (20) Business Days following Landlord' s receipt of a Renewal Notice delivered in accordance with this Section 1.3, Landlord shall provide Tenant with Landlord' s calculation of the base rent that Landlord could reasonably be expected to obtain in connection with a re-letting of the Demised Premises upon and subject to the other terms of this Lease (the "**Fair Market Rent**"), which Fair Market Rent shall exclude (i) all base rent that is attributable to Properties that, as a result of a Property Termination, will not constitute a part of the Demised Premises as of the commencement of the applicable Renewal Term ("**Pending Removal Properties**") and (ii) the fair market rental value (the "**Alterations Fair Market Rent**") of any Structural Alterations (excluding any Required Removal Alterations) made by Tenant in accordance with the terms of this Lease following the Commencement Date with respect to the structure or envelope of the buildings comprising the Leased Improvements that exist as of the Commencement Date ("**Existing Envelope Alterations**") that are subject to such Renewal Option and that are identified by Tenant in the applicable Renewal Notice (together with a reasonably-detailed description of any such Existing Envelope Alterations and, if reasonably requested by Landlord in order to determine the Alterations Fair Market Rent for the same, supporting documentation or information with respect to such Existing Envelope Alterations). If within sixty (60) days after Tenant' s receipt of such Fair Market Rent calculation (taking into account Landlord' s calculation of the Alterations Fair Market Rent, if applicable): (A) Tenant shall give Landlord Notice (a "**Fair Market Rent Dispute Notice**") that it disputes Landlord' s calculation of any such Fair Market Rent (taking into account the Alterations Fair Market Rent, as applicable) (a "**Fair Market Rent Dispute**"), such Fair Market Rent shall thereafter be determined in accordance with Article XXIII; (B) Tenant shall give Landlord Notice that Tenant affirmatively agrees with Landlord' s calculation (a "**Fair Market Rent Acceptance Notice**"),

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then such calculation shall conclusively be the Fair Market Rent during the applicable Renewal Term; or (C) Tenant fails to deliver to Landlord a Fair Market Rent Dispute Notice or a Fair Market Rent Acceptance Notice, then (1) Landlord may provide Notice to Tenant of such failure in accordance with the Deemed Approval Procedure and (2) if Tenant fails to respond within the time periods set forth in the Deemed Approval Procedure, such failure shall be deemed to be a Fair Market Rent Acceptance Notice and the Fair Market Rent shall be Landlord' s calculation thereof. Notwithstanding anything to the contrary in the foregoing or in such Article XXIII, under no circumstances shall the amount of any such Fair Market Rent during any Renewal Term be (I) for the initial Renewal Term, more than ten percent (10%) higher than the aggregate Base Rent payable during the final Lease Year of the Initial Term (excluding the Base Rent Allocation Amounts of any Pending Removal Properties) and (II) for any subsequent Renewal Term, more than ten percent (10%) higher than the aggregate Base Rent payable during the final Lease Year of the preceding Renewal Term (excluding the Base Rent Allocation Amounts of any Pending Removal Properties).

(d) During any Renewal Term, except as otherwise expressly set forth herein, all of the terms and conditions of this Lease shall remain in full force and effect. Each Renewal Term shall commence on the date immediately succeeding the then current Expiration Date (a "**Renewal Term Commencement Date**") and shall end on the fifth (5th) anniversary of such Expiration Date. Each of the Parties shall, at the request of the other, enter into a letter agreement or an amendment to this Lease memorializing and confirming the Fair Market Rent, the Demised Premises and other relevant terms applicable during the applicable Renewal Term, but the failure to enter into any such letter agreement or amendment shall not affect the effectiveness of such Renewal Option.

(e) For the avoidance of doubt, Tenant may not exercise any Renewal Option unless Tenant has validly exercised, as applicable, all previous Renewal Options (and the Term has been extended pursuant to each such previously exercised Renewal Option).

1.4 Intentionally Omitted.

1.5 Landlord Option Properties.

(a) If a Property becomes a Go Dark Trigger Property pursuant to the provisions of Section 7.4, such Go Dark Trigger Property shall constitute a "**Landlord Option Property**" and Landlord shall have the several independent options (each, a "**Landlord Option**"), exercisable from time to time in Landlord' s sole discretion to terminate this Lease as to any one or more of such Landlord Option Properties. Landlord may elect (a "**Landlord Option Election**") to terminate the Lease as to any Landlord Option Property by delivering Notice thereof to Tenant (a "**Landlord Option Notice**") at any time from and after the occurrence of a Go Dark Trigger Event with respect to such Go Dark Trigger Property, which Landlord Option Notice shall (i) be delivered within six (6) months after the earlier to occur of (x) the date that is 30 days after the Proposed Go Dark Start Date (as set forth in Tenant' s Go Dark Notice) and (y) the Go Dark Start Date (as set forth in Tenant' s Go Dark Start Date Notice), (ii) identify such Go Dark Trigger Property, and (iii) specify the date (the "**LO Termination Date**") on which such termination shall occur, which date shall be a Business Day that is no earlier than three (3) months, and no later than six (6) months, after the delivery of such Landlord Option Notice.

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(b) Following Landlord' s delivery to Tenant of a Landlord Option Notice:

(i) (A) On or before the date that is sixty (60) days prior to the LO Termination Date, Landlord shall deliver to Tenant an updated title commitment with respect to the applicable Landlord Option Property, (B) Tenant shall reasonably cooperate with Landlord in obtaining (at Landlord' s option and at Landlord' s sole expense) an owner' s and/or lender' s policy of title insurance (or an endorsement reasonably satisfactory to Landlord with respect to any existing title insurance policy of Landlord or any applicable Landlord Lender title insurance policy) (in each case, a "**Current Title Policy**") from a national title company selected by Landlord (a "**Title Company**") in a reasonable amount determined by Landlord or such Landlord Lender, committing to insure or insuring, as the case may be, Landlord' s fee title to such Landlord Option Property or the lien of any applicable Landlord Mortgage with respect thereto, and (C) Tenant shall be required to pay all Costs and Expenses required to remove all Encumbrances first affecting the applicable Landlord Option Property from and after the Commencement Date other than (1) Permitted Encumbrances (except for any Permitted Encumbrances described in clause (a) or (b) (collectively, "**Excepted Liens**") or clause (e) or (i)(iii) of the definition thereof); and (2) any Excepted Liens to the extent that Tenant Bonds the same; provided, however, that Tenant shall remain liable for the full payment and discharge of all such Excepted Liens in accordance with the applicable provisions hereof. Without limiting the foregoing, Tenant shall execute, acknowledge and deliver (in recordable form, if applicable) such affidavits and other instruments and documentation (including title affidavits, general assignments, bills of sale and/or terminations of or to the applicable memoranda of lease, as the case may be), each in form and substance reasonably satisfactory to the Parties, as Landlord, such Landlord Lender or the Title Company may reasonably require in connection with the issuance to Landlord and/or such Landlord Lender (as applicable) of a Current Title Policy effective as of the LO Termination Date. The obligations of Tenant under this clause (b)(i), as they relate to any Landlord Option Property or other Property, shall be referred to as the Tenant' s "**Title Obligations**".

(ii) Landlord and Tenant shall (or shall cause Lease Guarantors to, as applicable): (A) upon either Party' s request, on or prior to the LO Termination Date, execute, acknowledge and deliver to the other Party one or more amendments to this Lease and/or any of the other Lease Documents to which each is a party to reflect the termination of this Lease and such other Lease Documents (collectively, "**Lease Document Amendments**") as to the applicable Landlord Option Property on the LO Termination Date; and (B) at least one (1) Business Day prior to the LO Termination Date, deliver to Landlord invoices and other documentation reasonably requested by Landlord evidencing the Costs and Expenses incurred by Tenant in connection with the preparation, negotiation and execution of such Lease Document Amendments (collectively, "**LO Amendment Costs**"). Subject to Landlord' s receipt of such invoices and other documentation, Landlord shall reimburse the Tenant Parties for all LO Amendment Costs incurred by

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such Tenant Parties on or prior to the applicable LO Termination Date and Landlord shall be responsible for all costs and expenses incurred by Landlord in connection with Landlord' s exercise of the Landlord Option Election, except as otherwise provided in the immediately succeeding sentence. Notwithstanding the foregoing, Tenant shall be responsible for the Costs and Expenses incurred by Tenant in connection with Tenant' s closure of the applicable Landlord Option Property and Tenant' s surrender thereof to Landlord in the Required Return Condition (as hereafter defined) and otherwise in accordance with the terms and conditions of this Lease. Each of the Parties hereby acknowledges and agrees that neither Party shall be obligated to pay the other any termination fee or other similar compensation (other than Costs and Expenses for which a Party shall be entitled to reimbursement pursuant to the terms of this Section and other than Landlord' s obligation to pay to Tenant Landlord' s Share of Apportioned LO Capex Costs (as more particularly set forth in Section 8.3(e) hereof)) in connection with Landlord' s exercise of any Landlord Option Election with respect to any Landlord Option Property or the termination of this Lease with respect to such Landlord Option Property pursuant thereto.

(iii) On the applicable LO Termination Date: (A) unless Tenant (or its Designated Affiliate) purchases such Landlord Option Property pursuant to the terms of Section 17.1, Tenant shall surrender the applicable Landlord Option Property to Landlord in the Required Return Condition and otherwise in accordance with the terms and conditions of this Lease; (B) Landlord shall pay Tenant an amount equal to Landlord' s Share of any Apportioned LO Capex Costs with respect to such Landlord Option Property; (C) such Landlord Option Property shall be automatically removed from this Lease and shall no longer be a part of the Demised Premises, and this Lease shall automatically terminate with respect thereto; and (D) the Base Rent and applicable Property Charges shall be adjusted, and Tenant' s obligations hereunder with respect to such Landlord Option Property shall terminate, in each case in accordance with (and subject to) Section 1.10.

(iv) If Landlord exercises a Landlord Option, Tenant' s ROFO Right pursuant to this Lease shall terminate and be of no further force and effect with respect to such Landlord Option Property and any sale of such Landlord Option Property by Landlord subsequent to the delivery of the applicable Landlord Option Notice shall not be subject to such ROFO Right.

1.6 Intentionally Omitted.

1.7 Excluded Land.

(a) Landlord shall have the right from time to time, in Landlord' s sole discretion (except as otherwise provided below), to partition, divide, sub-divide, sell and/or finance the Excluded Land, subject to the terms and conditions of this Section 1.7. Landlord shall use diligent efforts to (i) determine the scope of the Excluded Land with respect to each Property, if any, within one hundred eighty (180) days after the PropCo Closing Date and (ii) upon determination of the scope of the Excluded Land, cause the surveyor that prepared the survey for

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the Demised Premises in connection with the Propco Closing Date to complete a survey of such Excluded Land as promptly as commercially practicable after such determination and, once such survey is completed, deliver a copy of such completed survey to Tenant, at Landlord' s sole cost and expense. Landlord' s failure notwithstanding such efforts to determine the scope of the Excluded Land for an applicable Property within the time frame set forth in the preceding sentence, or to obtain a survey of the Excluded Land within any particular period of time thereafter, shall not preclude Landlord from electing at a later date to partition, divide, sub-divide, sell and/or finance such Excluded Land. Neither the determination of the scope of any Excluded Land, nor the subsequent separation, development or use of the same, shall violate any applicable Property Requirements or impair in any material respect Tenant' s access to and from, or use and enjoyment of, the Demised Premises (together with its loading docks, bays, platforms, service-ways and driveways) by Tenant (or any subtenant that is a party to a sublease entered into in accordance with the provisions of this Lease) for operations therein and therefrom consistent with Tenant' s use thereof for the Permitted Use.

(b) With respect to each applicable Property, from and after the date that the applicable Excluded Land with respect to such Property has been determined by Landlord, Landlord shall use diligent efforts to take the following actions at Landlord' s sole cost and expense with respect to such Property (the "**Separation Actions**"): (i) create a separate tax lot for the Land, separate and apart from one or more separate tax lots for the Excluded Land (it being agreed that Landlord shall cause such separate tax lots to be created prior to any sale or development of such Excluded Land); (ii) establish any easements, reciprocal easements or other agreements reasonably required to establish unilateral or reciprocal ingress, egress, access, utilities, drainage, stormwater, construction and similar easements (the "**Excluded Land Easements**") which may be reasonably required to separate the Excluded Land and the Demised Premises and may be reasonably required by the Parties to provide each of the Excluded Land and the Demised Premises with separate ingress, egress, utilities, facilities and other separate attributes; (iii) establish such other joint arrangements (the "**Excluded Land Co-Existence Agreements**") and take such other actions as may be reasonably required for the harmonious co-existence and the physical and legal separation of the Excluded Land and the Demised Premises; and (iv) if direct metering or direct access is not available at a commercially reasonable cost, creation of separate metering (or sub-metering) of utilities and other actions designed to allocate the provision and the cost of utilities between the Excluded Land (and any subsequent improvements thereto) and the Demised Premises, it being the mutual understanding of the Parties that, to the greatest extent practicable under the circumstances, amounts constituting Third-Party Charges shall be (A) allocable separately to the Excluded Land and the Demised Premises and (B) billed and payable separately by Landlord (as to the Excluded Land) and by Tenant (as to the Demised Premises); provided, however, that, to the extent that it is not commercially practicable for the Parties to arrange for the separate (or other equitable) payment of any such Third-Party Charges directly by the Parties, the Parties shall jointly negotiate, approve and execute such cost sharing agreements as may be mutually acceptable to them in their commercially reasonable judgment (the "**Excluded Land Cost Sharing Agreements**") and shall otherwise cooperate reasonably and in good faith with each other to ensure that the Property Charges attributable to the Demised Premises are paid by Tenant and that all real estate taxes and other costs and expenses allocable to the Excluded Land are paid by Landlord. If the Parties are unable to agree

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upon the form and substance of an Excluded Land Easement, an Excluded Land Co-Existence Agreement or an Excluded Land Cost Sharing Agreement, either Party may submit such disagreement to binding arbitration in accordance with the provisions of Section 27.1 hereof.

(c) Tenant shall cooperate, at Landlord' s sole cost and expense, with the reasonable requests of Landlord in connection with the Separation Actions, it being agreed that Landlord shall be solely responsible for: (i) paying all of its own costs, expenses and fees (including permitting fees) incurred in connection with the Separation Actions and in connection with entering into, negotiating and/or recording any Excluded Land Easement, Excluded Land Co-Existence Agreement or Excluded Land Cost Sharing Agreement; and (ii) reimbursing Tenant, promptly after Tenant' s request therefor (which request shall be accompanied by reasonable supporting documentation), for Costs and Expenses incurred by or for the benefit of Tenant in connection with Landlord' s requests for Tenant' s cooperation in connection with Separation Actions, including reviewing, entering into and negotiating any Excluded Land Easement, Excluded Land Co-Existence Agreement or Excluded Land Cost Sharing Agreement.

(d) With respect to each applicable Property, until such time as Landlord creates a separate tax lot for the applicable Excluded Land, real estate taxes (and any other impositions) assessed against the applicable Demised Premises and the Excluded Land shall be apportioned between the Parties equitably, with Tenant paying its equitable share of such taxes (and other impositions) for such Demised Premises and Landlord paying its equitable share of such taxes (and other impositions) for such Excluded Land. The Parties shall cooperate in good faith to determine the equitable share of such taxes (and other impositions) attributable to such Excluded Land. If, within thirty (30) days following Landlord' s determination of the size and location of the Excluded Land with respect to a Property, the Parties are unable to agree on the equitable sharing of such taxes (and other impositions), either Party may submit such disagreement to binding arbitration in accordance with the provisions of Section 27.1 hereof. With respect to each Property, prior to the creation of separate tax lots for the applicable Excluded Land, once the equitable share attributable to such Excluded Land has been finally determined, Landlord shall pay its equitable share of real estate taxes (and/or other impositions) directly to the applicable taxing authorities and submit proof of such payment to Tenant on or before the day that is ten (10) Business Days before the applicable due dates thereof. If Landlord fails to pay its equitable share of any real estate taxes (and/or other impositions) in accordance with the immediately preceding sentence, Tenant shall have the right upon five (5) Business Days' Notice (provided Landlord does not pay the same within such five (5) Business Day period) to pay the same on Landlord' s behalf (including any late charges or penalties that may have accrued by reason of any late payment thereof by Landlord) and, at Tenant' s option and without duplication, to (i) receive reimbursement for such payment from Landlord promptly after Tenant' s written request therefor (which request shall be accompanied by reasonable supporting documentation of the payment of such taxes and/or other impositions) and/or (ii) credit the same against the next installments of Base Rent due from Tenant to Landlord hereunder. In addition, following the date that the equitable share attributable to such Excluded Land has been finally determined, to the extent Tenant paid any real estate taxes (and/or other impositions) attributable to such Excluded Land, Landlord shall reimburse Tenant for such amount within fifteen (15) days after Tenant' s request therefor (which request shall be accompanied by reasonable supporting documentation of

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the payment of such taxes and/or other impositions). In the event Landlord fails to reimburse Tenant within the aforesaid fifteen (15) day period, Tenant shall have the right to credit the unreimbursed amount against the next installments of Base Rent due from Tenant to Landlord hereunder.

1.8 Reservation of Access . Tenant hereby acknowledges and agrees that Landlord (for itself and its Related Users and Landlord Lenders) hereby retains and reserves all rights of access, ingress and egress in, on, over and through each Demised Premises for all reasonable purposes and in each case upon reasonable prior written notice during normal business hours (and, if requested by Tenant, in the company of a representative of Tenant), in each case, except in the event of an emergency, in connection with any of the following:

(a) the effectuation or evaluation of any potential termination of this Lease as to all or any portion of such Demised Premises in connection with any termination right expressly provided in this Lease, including, without limitation, the Landlord Option (both before and following the exercise of such Landlord Option or other termination right (as applicable));

(b) the performance of any maintenance, repair, Alterations, service, installations and/or other Work with respect to such Demised Premises that Landlord is entitled or obligated to perform under the Lease;

(c) the compliance by Landlord and/or any of its Affiliates with any of their respective obligations under any applicable Landlord Financing Documents;

(d) inspecting and showing such Demised Premises to potential purchasers, tenants and lenders and/or advertising the availability of such Demised Premises for sale or, during the final twenty-four (24) months of the then current Term (taking into account any validly exercised Renewal Options as of such date), reletting; and

(e) the exercise of all other rights and remedies of Landlord in connection with the foregoing and otherwise under this Lease.

Notwithstanding the foregoing or anything to the contrary herein, all rights of access and entry shall (except, for the avoidance of doubt, during the continuance of an Event of Default) be exercised reasonably and in such a manner as to not materially or unreasonably interfere with Tenant' s business operations at the Demised Premises.

1.9 Separation of Leases.

(a) At any time and from time to time, at the election of Landlord in its sole and absolute discretion and upon Notice (each such Notice, a "**Lease Severance Notice**") delivered by Landlord, subject to the applicable deadline set forth in the immediately succeeding sentence (each applicable deadline, a "**Lease Severance Deadline**"), Landlord may sever and remove one or more Properties (each, a "**Severed Property**" and, collectively, the "**Severed Properties**") from this Lease, and such Severed Property or Severed Properties shall upon such severance and thereafter be subject to a separate lease (each, a "**Severed Lease**") between the

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purchaser of the applicable Severed Properties or other designee of Landlord (as applicable, a "**Severed Landlord**"), in each case, as landlord, and Penney Tenant III LLC, a Delaware limited liability company, or another Subsidiary of Tenant' s Parent (other than Tenant or any Subsidiary thereof) reasonably acceptable to Landlord, in each case, as tenant (the "**Severed Tenant**"), which Severed Lease shall be effective as of the date of the transfer of the applicable Severed Properties to the applicable Severed Landlord and the execution by such Severed Landlord and the Severed Tenant (as applicable) of all related documentation required under this Section 1.9 (a "**Lease Severance Date**"). Each Lease Severance Notice shall identify the Severed Properties proposed to be subject to each Severed Lease. The Lease Severance Deadlines shall be as follows: (A) for the first Severed Lease, the date that is forty-three (43) days after Landlord delivers the applicable Lease Severance Notice and drafts of the proposed Severed Lease and proposed Severed Lease Ancillary Documents in the forms described in this Section 1.9 (which documentation shall, in each case, be prepared by Landlord at Landlord' s sole cost and expense); and (B) for each Severed Lease subsequent to the first Severed Lease, the date that is twenty-eight (28) days after Landlord delivers the applicable Lease Severance Notice and drafts of the proposed Severed Lease and proposed Severed Lease Ancillary Documents in the forms described in this Section 1.9 (which documentation shall, in each case, be prepared by Landlord at Landlord' s sole cost and expense). Each Lease Severance Notice shall identify the Severed Properties proposed to be subject to each Severed Lease and, with respect to any Lease Severance Notice delivered by Landlord to Tenant in connection with a Property Sale, shall be accompanied by a ROFO Notice pursuant to, and exercisable in accordance with, the provisions of Section 17.1 and Schedule 17.1. For the avoidance of doubt, notwithstanding the fact that Severed Leases proposed under this Section 1.9(a) are aggregated with "Severed Leases" under (and as defined in) the Retail Master Lease for purposes of determining the extension of any "Lease Severance Deadline" under (and as defined in) the Retail Master Lease, no such aggregation shall operate to extend the Lease Severance Deadlines for Severed Leases proposed under this Lease.

(b) In the event that Tenant determines, in its good faith discretion, that any Severed Lease delivered by Landlord to Tenant contains changes to the Pre-Agreed Severed Lease Form that are material or adverse to Tenant, then Tenant shall have the right to object to such changes in accordance with the provisions of this Section 1.9(b). Tenant shall make any objection described in the immediately preceding sentence (if at all) by delivering Notice thereof to Landlord specifying, in electronic format by highlighting the changes to the Pre-Agreed Severed Lease Form to which Tenant objects and describing, in reasonable detail (in bracketed notes or footnotes to such highlighted language), the reason that Tenant believes such changes are material or adverse (a "**Severed Lease Form Objection Notice**") within fourteen (14) days after the delivery of the applicable Lease Severance Notice (together with drafts of the proposed Severed Lease and proposed Severed Lease Ancillary Documents). Upon Landlord' s receipt of a Severed Lease Form Objection Notice, Landlord may submit such dispute to binding arbitration in accordance with the provisions of Section 27.1; provided, however, that (I) each of the five (5) Business Day periods referred to in Section 27.1(c) shall be reduced to six (6) days and (II) the fourteen (14) day period referred to in Section 27.1(e) shall be reduced to seven (7) days, such that any such arbitration shall be completed and such arbitrator' s written decision shall be rendered in not more than twenty-one (21) days from the date of Landlord' s written Notice submitting such dispute to binding arbitration (such twenty-one (21) day period, the "**LS Dispute**

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Resolution Period"). If Tenant fails to deliver a Severed Lease Form Objection Notice with respect to any draft Severed Lease within the fourteen (14) day period set forth above, then Tenant shall be deemed to have irrevocably waived its right to object to any applicable changes to the Pre-Agreed Severed Lease Form reflected in such draft and shall be obligated to execute and deliver the applicable Severed Lease (together with the applicable Severed Lease Ancillary Documents in the forms described in this Section 1.9) by the applicable Lease Severance Deadline.

(c) Promptly following the execution and delivery of this Lease, the Parties shall cooperate in good faith to agree upon a ranked list of a minimum of six (6) and a maximum of ten (10) potential arbitrators for the arbitration of any dispute described in clause (b) above in accordance with the express provisions of this Section 1.9(c) and Section 27.1 (such list, the "**Arbitrator List**"). If the Parties are unable to agree upon both the Arbitrator List and the rankings of the arbitrators on such Arbitrator List by January 2, 2021, or if none of the individuals on any agreed-upon Arbitrator List is both disinterested (as more fully described below) and able to serve as an arbitrator of the applicable dispute at the time of such arbitration, then in any such case, any Party may submit such dispute to the Judicial Arbitration Mediation Service (www.jamsadr.com) or its successor organization in New York County, New York ("**JAMS**"), for the resolution of such dispute within the LS Dispute Resolution Period. If such dispute is so submitted to JAMS, then JAMS shall be the exclusive forum for the resolution of the applicable dispute. The Parties may modify the Arbitrator List by mutual agreement in writing from time to time. If Landlord submits a dispute with respect to a draft Severed Lease to arbitration (other than an arbitration pursuant to JAMS), such arbitration shall be conducted in accordance with the express provisions of this Section 1.9(c) and Section 27.1 by the arbitrator ranked highest on the Arbitrator List who is then available to conduct the same and is then disinterested (it being agreed that any arbitrator who has, or whose firm has, represented either Party or an Affiliate of either Party within the preceding five (5) years or who has a personal or financial stake in the outcome of the dispute shall be deemed not to be disinterested). If such highest-ranked arbitrator from the Arbitrator List is not available to conduct the arbitration or is not then disinterested, then the next-highest ranked arbitrator that is then available and then disinterested shall be selected. If no arbitrator on the Arbitrator List is then available and disinterested, or if the Parties have not agreed upon both the Arbitrator List and the rankings of the arbitrators on such Arbitrator List by January 2, 2021, then in either such case, such dispute shall be submitted to JAMS for the resolution of such dispute within the LS Dispute Resolution Period. If the applicable arbitrator (including JAMS, if applicable) pursuant to this Section 1.9(c) makes a determination with respect to the applicable dispute, then such determination shall be binding upon the Parties and shall not be appealable; provided, however, that Landlord, at its option upon Notice to Tenant following such determination, may elect to withdraw from the applicable Severed Lease the changes that were the subject of such dispute and to re-submit such Severed Lease in the form described in this Section 1.9 for Tenant' s execution and delivery. Tenant acknowledges and agrees that if Landlord withdraws the applicable disputed changes from a Severed Lease in accordance with the immediately preceding sentence, then Tenant shall remain obligated to execute and deliver such re-submitted Severed Lease by the applicable Lease Severance Deadline (if Landlord has removed such changes not later than the date that is at least two (2) Business Days prior to the applicable Lease Severance Deadline) and, if Landlord has not withdrawn such changes by such

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date, then Tenant shall remain obligated to execute and deliver such Severed Lease (without such disputed changes) within two (2) Business Days following the date on which Landlord withdraws such changes. If the applicable arbitrator (including JAMS, if applicable) pursuant to this Section 1.9(c) determines that any changes to a Severed Lease Form that are the subject of any applicable Severed Lease Form Objection Notice are material or adverse to Tenant, or if Landlord withdraws such disputed changes in accordance with this Section 1.9(c), then in either such case, Landlord shall pay the costs and expenses of the related arbitration, its own costs and expenses in connection with such arbitration, and Tenant' s Costs and Expenses in connection with such arbitration; if the applicable arbitrator (including JAMS, if applicable) pursuant to this Section 1.9(c) determines that any changes to a Severed Lease Form that are the subject of any applicable Severed Lease Form Objection Notice are not material or adverse to Tenant, then Tenant shall pay the costs and expenses of the related arbitration, its own costs and expenses in connection with such arbitration, and the Landlord' s Costs and Expenses in connection with such arbitration, and shall not later than two (2) Business Days following the issuance of a final written decision by the arbitrator, execute and deliver to Landlord the Severed Lease and the other Severed Lease Ancillary Documents in the form submitted by Landlord to Tenant. Notwithstanding anything to the contrary herein, the Parties agree that while an arbitration proceeding is pending pursuant to this Section 1.9(c), Tenant shall not be obligated to execute or deliver the applicable Severed Lease in dispute (or the accompanying Severed Lease Ancillary Documents). At any time during an arbitration proceeding, either side may concede an issue by informing the arbitrator of the concession, and the arbitrator will promptly issue a decision recognizing the concession. No such concession shall have any preclusive or evidentiary effect in any future arbitration or other proceeding.

(d) By the applicable Lease Severance Deadline, the Severed Tenant shall execute, acknowledge (if applicable) and deliver to the applicable Severed Landlord such Severed Lease and Severed Lease Ancillary Documents with respect to the applicable Severed Properties and, following Landlord' s request therefor in accordance with Sections 1.9(d) and 9.2(c), a copy of any applicable severed, amended or replacement Affiliate Sublease that shall affect the applicable Severed Properties from and after the applicable Lease Severance Date. At least one (1) Business Day prior to the applicable Lease Severance Date, Tenant shall use commercially reasonable efforts to deliver to Landlord invoices and other documentation reasonably requested by Landlord evidencing the Costs and Expenses incurred by Tenant in connection with the applicable Severed Lease and any other documentation required under this Section 1.9. Upon its receipt of such invoices and other documentation, Landlord shall pay or reimburse Tenant for all Costs and Expenses incurred by Tenant in connection with each applicable Severed Lease and Severed Lease Ancillary Documents. Each such Severed Lease shall: (i) be for a term that is equal to the then remaining Term; (ii) contain renewal options equivalent to any then remaining Renewal Options; (iii) be guaranteed and/or secured by (A) a new guaranty from the then current Lease Guarantors (a "**Severed Lease Supplemental Guaranty**") and (B) a new environmental indemnity agreement from the Severed Tenant and such Lease Guarantors (a "**Severed Lease Supplemental Environmental Indemnity Agreement**"; together with the Severed Lease Supplemental Guaranty, collectively, the "**Severed Lease Ancillary Documents**"), in each case in the form and substance of the existing Lease Guaranty and the existing Environmental Indemnity Agreement, respectively, together with any revisions thereto as may be reasonably

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required by Landlord and Tenant to reflect the severed nature of such Severed Lease and Severed Properties; and (iv) except as expressly set forth in this Lease, be on the same terms and conditions as the terms and conditions of this Lease, subject, in each case, to the following terms and conditions:

(A) Effect of Lease Severance on the ROFO Right. No Severed Lease shall contain any ROFO Rights terminated pursuant to the provisions of (and as provided in) Schedule 17.1.

(B) Effect of Lease Severance on Financial Reporting. The financial reporting obligations set forth in Section 20.21 shall be modified in each Severed Lease as follows:

(1) the applicable Severed Landlord shall not have the right under Section 20.21(a) to visit the applicable Severed Tenant' s central office to examine (or make copies of) its records and books of account;

(2) such Severed Landlord shall not have Management Meeting Rights;

(3) the applicable Severed Tenant shall only be required to deliver Annual Financial Statements or Quarterly Financial Statements to the applicable Severed Landlord if such Severed Landlord or its Affiliates are required to file, furnish or disclose such Annual Financial Statements or Quarterly Financial Statements pursuant to any federal securities laws (including, without limitation, the ' 34 Act or the ' 33 Act) or other Legal Requirements applicable to such Severed Landlord or its Affiliates; provided, however, that the foregoing shall not limit such Severed Tenant' s obligation to deliver to the Severed Landlord the Covenant Compliance Certifications on the terms and conditions set forth in this Lease;

(4) all references to the "Reporting Package" in this Lease (including clause (c) of Section 20.21) shall be replaced with references to the "Limited Reporting Package," and such Limited Reporting Package shall be delivered within the same time periods as the Reporting Package is required to be delivered; provided, however, that the Limited Reporting Package shall be deemed to be Tenant Confidential Information pursuant to the terms of such Severed Lease. As used herein, "**Limited Reporting Package**" means the financial information to be provided by a Severed Tenant to the applicable Severed Landlord in the form (and requiring the information) set forth on Schedule 20.21-B; and

(5) clause (d)(ii)(A) of Section 20.21 shall be deleted in its entirety.

For the avoidance of doubt, except to the extent that the financial reporting obligations under this Lease are expressly modified with respect to Severed Leases pursuant to this Section 1.9(d)(B), such financial reporting obligations shall be unmodified and shall apply with full force and effect to all Severed Tenants under Severed Leases.

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(C) Effect of Lease Severance on the No-Consent Sublease Basket. Each Severed Lease shall contain a "No-Consent Sublease Basket" (a "**Severed Lease No-Consent Sublease Basket**") equal to twenty-five percent (25%) of the Gross Leasable Square Footage of all Severed Properties demised to the Severed Tenant under such Severed Lease. For the avoidance of doubt, (1) if a No-Consent Sublease is entered into with respect to a Property prior to such Property becoming a Severed Property, as of the Lease Severance Date, (I) the No-Consent Sublease Basket for the Properties remaining subject to this Lease shall not be reduced or increased as a result of such severance and (II) the Severed Lease No-Consent Sublease Basket for the Severed Property or Severed Properties subject to the Severed Lease shall remain at twenty-five percent (25%) of the Gross Leasable Square Footage of such Severed Property or Severed Properties demised to the Severed Tenant under such Severed Lease and (2) if a No-Consent Sublease is entered into with respect to a Severed Property after the applicable Lease Severance Date, such No-Consent Sublease shall not increase or decrease the No-Consent Sublease Basket under this Lease and shall solely reduce the Gross Leasable Square Footage available under the Severed Lease No-Consent Sublease Basket for such Severed Property or Severed Properties.

(D) Effect of Lease Severance on the Second Chance Sublease Waiting Period. In connection with a Severed Lease for less than all of the Properties, such Severed Lease shall contain a Second Chance Sublease Waiting Period of forty-five (45) days rather than ninety (90) days; provided, however, if the Severed Lease applies to all of the Properties originally subject to this Lease, the Second Chance Sublease Waiting Period shall remain at ninety (90) days.

(E) Effect of Lease Severance on Outstanding Alterations Payables. Section 8.1(b) (relating to Outstanding Alterations Payables) shall be deleted in all Severed Leases in its entirety, and replaced with the following provisions (with references to "Landlord", "Tenant", the "Lease" and the "Property", respectively, under such provisions, being deemed to refer to the applicable Severed Landlord, Severed Tenant, Severed Lease and Severed Property subject to the applicable Severed Lease):

> "Any request for Landlord' s consent to an Alteration under this Section 8.1(b) shall be accompanied by an Officer' s Certificate, pursuant to which Tenant shall certify either (i) that the Tangible Net Worth of the Lease Guarantors equals or exceeds the Reference Net Worth and specifying such Tangible Net Worth, (ii) that, in connection with the applicable Alteration or any other Alterations at the Property (or any other Properties subject to this Lease), no payables accrued by Tenant with respect to such Alteration(s) (excluding, for the avoidance of doubt, any payables that are the subject of a bona fide dispute conducted in accordance with any applicable provisions of Section 4.2) (collectively, "**Alterations Payables**") are more than sixty (60) days past due (and promptly following Landlord' s written request, Tenant shall provide any back-up documentation reasonably requested by Landlord with respect to such accrued payables) or (iii) that if Landlord requests the same, Tenant shall post security for the applicable Alteration as described below. In the event that Tenant fails to deliver a certification that complies with either clause (i) or clause (ii) above by the date that Landlord' s consent to the applicable Alteration is required, Landlord may condition its consent thereto upon Tenant' s agreement to deposit cash with

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a nationally recognized Title Company or another nationally recognized institutional third party depository selected by Landlord and reasonably approved by Tenant in an amount equal to one hundred ten percent (110%) of the cost of such Alteration (as reasonably estimated by Tenant and supported by any back-up documentation reasonably requested by Landlord, provided that in all events Tenant' s policies and practices for accruing amounts constituting Alterations Payables shall be consistent with the policies and practices of the Tenant Parties with respect to their other accounts payable) that is the subject of such request for Landlord' s consent, which cash shall be disbursed to Tenant periodically in the manner, and subject to similar conditions, as the Restoration Conditions, as applicable; provided, however, that (A) such cash shall be made available to Landlord for the completion of such Alteration in the event that Tenant fails to complete the same in accordance with the terms and conditions of this Lease and such failure continues beyond any applicable notice and cure periods, (B) in the event Tenant is completing such Alterations in accordance with the applicable terms and conditions of this Lease, amounts may, pursuant to an escrow arrangement reasonably acceptable to the Parties, be disbursed to Tenant periodically in the manner, and subject to similar conditions, as the Restoration Conditions, as applicable, and (C) following the completion of such Alteration by Tenant, any remaining deposited amount returned to Tenant upon the completion of such Alteration in accordance with the terms and conditions of this Lease so long as no Event of Default then exists. Alternatively, Tenant may elect to deposit cash with Landlord (or, at Tenant' s option, to deliver to Landlord an irrevocable standby letter of credit in form and substance reasonably acceptable to Landlord and issued by a Qualified Financial Institution or other financial institution reasonably acceptable to Landlord), in each case in an amount equal to one hundred ten percent (110%) of the cost of such Alteration, which cash or letter of credit (1) may be drawn by Landlord for the completion of such Alteration in the event Tenant fails to complete the same in accordance with the applicable terms and conditions of this Lease and such failure continues beyond any applicable notice and cure periods, (2) in the event Tenant is completing such Alterations in accordance with the applicable terms and conditions of this Lease, Landlord shall, to the extent such letter of credit permits partial draws, permit partial amounts to be disbursed to Tenant periodically, pursuant to an escrow arrangement acceptable to Landlord, in the manner, and subject to similar conditions, as the Restoration Conditions, as applicable, and (3) shall be returned to Tenant upon the completion of such Alteration in accordance with such terms and conditions so long as no Event of Default then exists."

In connection with the foregoing, all references to "**Outstanding Alterations Payables**" and the "**Outstanding Alterations Payables Threshold**" shall be deleted in Severed Leases.

(F) Effect of Lease Severance on Notice of Corporate Transactions. In connection with a Corporate Transaction for which Landlord' s consent is not required in accordance with Section 9.3(a), in lieu of giving the Severed Landlord at least thirty (30) days' advance Notice of such Corporate Transaction, each Severed Lease shall provide that Tenant shall be required to provide such Severed Landlord with Notice of such Corporate Transaction within

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thirty (30) days following such Corporate Transaction, together with a certification from Tenant that such Corporate Transaction did not require such Severed Landlord' s consent in accordance with Section 9.3(a).

(G) Effect of Lease Severance on the S&P Insurer Rating Cap. From and after any Lease Severance Date, the Severed Lease shall contain the obligation of the Severed Tenant to obtain insurance policies with the S&P Insurer Minimum Rating in the same manner as (and subject to same provisions as are set forth in) Section 11.4(c), but any excess expense obligation of the Severed Landlord shall be limited to any cost allocable to the Severed Properties on a pro rata basis based on the Base Rent Allocation Amounts of the Severed Properties and the total Base Rent payable under this Lease and all Severed Leases then existing.

(H) Effects of Lease Severance on Lease Severance Provisions. Each Severed Lease covering more than one Severed Property shall (1) contain the same "Lease Severance Deadlines" set forth in this Lease and (2) provide that the Severed Tenant' s failure to timely deliver Severed Leases and Severed Lease Ancillary Documents shall constitute an "Event of Default" on the same terms and conditions set forth in this Lease; provided, however, that, for the avoidance of doubt and without limiting anything in Section 1.9(e), no failure of the Severed Tenant to timely deliver one or more further "Severed Leases" in accordance with the requirements of the applicable Severed Lease shall trigger an Event of Default under this Lease.

(I) Other Effects of Lease Severance. Without limiting the foregoing, each Severed Lease shall contain appropriate adjustments (including to the Exhibits and Schedules hereto) to reflect that such Severed Lease only relates to the applicable Severed Properties, including, without limitation, the following:

(1) Base Rent. The initial Base Rent for each Severed Property shall be the then current Base Rent Allocation Amount thereof and thereafter during the term of such Severed Lease shall annually increase in the same manner in which Base Rent increases under this Lease.

(2) Tenant' s Proportionate Share. "Tenant' s Proportionate Share" under such Severed Lease shall continue to be calculated in the same manner as Tenant' s Proportionate Share under this Lease.

(3) Liabilities and Obligations. Such Severed Lease shall provide that the Severed Tenant shall be responsible for the payment, performance and satisfaction of all of Tenant' s duties, obligations and liabilities under this Lease with respect to the applicable Severed Properties from after the applicable Lease Severance Date (regardless of when such duties, obligations and liabilities accrue); provided, however, that to the extent that any such duties, obligations or liabilities are monetary in nature and accrue prior to the applicable Lease Severance Date and were not paid, performed and satisfied in full prior to such Lease Severance Date, the obligation of Tenant hereunder with respect thereto shall survive the termination of this Lease with respect to such Severed Properties on such Lease Severance Date and the Severed Tenant shall have no responsibility for the same.

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(4) Amendments to this Lease. Effective as of the applicable Lease Severance Date, this Lease shall be deemed to be amended as follows: (I) the applicable Severed Properties shall be removed from this Lease and shall no longer be a part of the Demised Premises, and this Lease shall terminate with respect to such Severed Properties; and (II) the Base Rent and applicable Property Charges shall be adjusted, and except as set forth in the foregoing clause (3), Tenant' s obligations hereunder with respect to such Severed Properties shall terminate, in each case in accordance with (and subject to) Section 1.10.

(5) Other Undertakings. Upon Landlord' s request (and at Landlord' s sole cost and expense), Tenant and/or any Severed Tenant shall execute and deliver new or amended memoranda of lease (or amendments or terminations of existing memoranda of lease) as are reasonably necessary or appropriate to effectuate fully the provisions and intent of this Section 1.9 and/or as any applicable Severed Landlord may reasonably request. In addition, upon Tenant' s request (and at Tenant' s sole cost and expense), Landlord shall deliver (or cause to be delivered) to Tenant an assignment and assumption agreement with respect to any collateral access agreements then in effect with respect to the applicable Severed Property(ies), or (if applicable) a supplemental collateral access agreement in accordance with (and subject to) the terms of Section 9.7, in each case, executed by the applicable Severed Landlord and, if applicable, Landlord.

(6) Monetary Thresholds and Baskets. For the avoidance of doubt, except as otherwise expressly provided in this Section 1.9(d) with respect to the No-Consent Sublease Basket, or elsewhere in this Lease, all other monetary thresholds, baskets and other similar limitations relating to the Demised Premises under this Lease shall, from and after the applicable Lease Severance Date, be determined separately with reference, respectively, to (I) as to each such Severed Lease, the applicable Severed Properties thereunder and (II) as to this Lease, the Demised Premises remaining subject hereto.

(7) State-Specific Provisions. If applicable, the State Specific Provisions (solely to the extent the same are relevant to the applicable Severed Properties) shall be included in the applicable Severed Lease.

(e) No Severed Lease shall be cross-defaulted with this Lease or with any other Severed Lease. In addition, if, in connection with any Severed Lease, any Affiliate Sublease (including, without limitation, the Master Affiliate Sublease) exists that will remain in place as of the Lease Severance Date and affect the Severed Properties that are the subject of such Severed Lease and any other Properties remaining subject to this Lease, then Tenant shall (if requested by the applicable Severed Landlord or its lender), at no cost or expense to Landlord or the applicable Severed Landlord, (i) cause such Affiliate Sublease to be severed, amended or replaced with another Affiliate Sublease so that it shall only affect the applicable Severed Properties from and after such Lease Severance Date and (ii) deliver a copy of such severed Affiliate Sublease to Landlord and the applicable Severed Landlord promptly following Landlord' s request therefor. For the avoidance of doubt, the provisions hereof that condition the subordination of this Lease to any Landlord Financing Documents upon the delivery to Tenant of an SNDA shall be included

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in any such Severed Lease on the express terms and conditions herein set forth. If any Landlord Lender continues to have a lien on any Severed Property that is not released on the applicable Lease Severance Date, then Tenant shall cause Severed Tenant to execute, acknowledge and deliver, at Landlord' s or any applicable Severed Landlord' s expense, a new SNDA with respect to such Severed Lease, which new SNDA shall be on substantially the same terms and conditions as the applicable existing SNDA.

(f) As more fully described in Section 1.2 above, from and after any Lease Severance Date with respect to the applicable Severed Properties: (i) this Lease shall continue to constitute one single, unitary, indivisible lease of the entirety of the Demised Premises (excluding the Severed Properties) and not separate or severable leases governed by similar terms; (ii) the Demised Premises (excluding the Severed Properties) shall continue to constitute one indivisible economic unit, and the Base Rent (excluding the Base Rent allocable to the Severed Properties) and all other economic and other material lease provisions have been extensively negotiated and agreed to, based on the understanding and agreement of the Parties (and each of the Parties has entered into this Lease in reliance thereon, and it is a material inducement to each of them), that the demise of all of the Demised Premises (excluding the Severed Properties) to Tenant herein is a single, unitary, indivisible, composite, and inseparable transaction; (iii) except for any subsequent Severed Lease created pursuant to the express terms of this Section 1.9 and except as otherwise expressly provided in this Lease with respect to any other term or provision hereof for specific purposes (and then only to the extent expressly so provided), all provisions of this Lease shall continue to apply equally and uniformly to the entire Demised Premises (excluding the Severed Properties) as one indivisible unit; and (iv) each of Landlord and Tenant intend that this Lease shall continue to be, and the provisions of this Lease shall at all times continue to be construed, interpreted and applied so as to carry out their mutual objective to create a single, unitary, indivisible lease of the entire Demised Premises (excluding the Severed Properties) and, in particular but without limitation, that, for purposes of 11 U.S.C. Section 365, or any successor or replacement thereof or any analogous state law, or any attempt thereunder to assume, reject or assign this Lease in whole or in part, this Lease is one indivisible and non-severable lease and executory contract dealing with one legal and economic unit and that this Lease must be assumed, rejected or assigned as a whole with respect to the entirety (and only as to the entirety) of the Demised Premises (excluding the Severed Properties).

1.10 Effect of Property Termination. If this Lease terminates with respect to all or any portion of the Demised Premises (each, a "**Terminated Property**") pursuant to or as a result of (a) Landlord' s exercise of any Landlord Option or (b) any Major Casualty, Major Condemnation, severance of the Lease pursuant to Section 1.9, or purchase of a Property by Tenant (or its Designated Affiliate) pursuant to Schedule 17.1 (each of the foregoing, a "**Property Termination**"), then from and after the Property Termination Date with respect to such Terminated Property:

(i) on such Property Termination Date, Tenant shall pay to Landlord the full amount of any Rent that remains outstanding with respect to such Terminated Property (and the Parties shall prorate and adjust any Rent to the extent necessary with respect to any amounts that may have been prepaid or underpaid by Tenant, and shall finally adjust any such amounts not known or ascertainable on such Property Termination Date promptly after such amounts have been determined);

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(ii) the Base Rent shall be reduced by the Base Rent Allocation Amount for such Terminated Property;

(iii) Tenant and the Lease Guarantors shall be released from any other obligations under the Lease Documents to which each is a party, including Tenant' s obligation to pay Property Charges (subject, with respect to the Environmental Indemnity Agreement, to the express survival provisions thereof) that, in each case, first arise or accrue from and after such Property Termination Date and solely relate to such Terminated Property; and

(iv) this Lease shall otherwise remain unmodified and in full force and effect, Tenant hereby acknowledging and agreeing that, except for the adjustments to Tenant' s obligations expressly set forth in the foregoing clauses (ii) and (iii), any such Property Termination shall not affect this Lease or any terms hereof as the same related to (A) the remainder of the Demised Premises or (B) any Surviving Obligations (including with respect to such Terminated Property).

ARTICLE II
DEFINITIONS

2.1 Definitions. For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (a) the terms defined in this Article II have the meanings assigned to them in this Article and include the plural as well as the singular; (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; (c) all references in this Lease to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease; (d) the word "including" or any variation thereof shall mean "including, without limitation" or the applicable variation thereof; (e) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision; and (f) for the calculation of the Guarantor Financial Covenants and any other financial ratios or tests set forth in this Lease, this Lease, regardless of its treatment under GAAP, shall be deemed to be an operating lease and the Rent shall be treated as an operating expense and shall not constitute Indebtedness or interest expense.

"**33 Act**": The Securities Act of 1933, as amended.

"**34 Act**": The Securities Exchange Act of 1934, as amended.

"**5% Threshold**": As defined in Section 8.1(a).

"**10% Threshold**": As defined in Section 8.1(a).

"**10% Threshold Election**": As defined in Section 8.1(a).

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"**AAA**": As defined in Section 27.1(a).

"**ABL Facility**": The asset-based lending facility evidenced by that certain Credit Agreement, dated as of the date hereof, by and among Tenant' s Parent (and/or certain of its Subsidiaries), collectively, as borrower, the lenders from time to time party thereto, and Wells Fargo Bank, National Association, as administrative agent and collateral agent, as the same may be amended, restated, supplemented or modified in accordance with its terms, or as the same may be refinanced, from time to time.

"**Acceleration Amount**": As defined in Section 13.3(c)(ii).

"**Acceptable Accounting Firm**": As defined in the definition of "Annual Financial Statements".

"**Acceptable Credit Facility**": Each of (a) the ABL Facility and (b) such other credit facilities as may be obtained from time to time by any Tenant Party as a borrower, debtor or other obligor from third party lenders on arms' length terms and pursuant to market standard loan agreements, indentures and/or credit documents.

"**Acceptable Credit Facility Lender**": The lender(s), administrative agent(s) and/or collateral agent(s), as applicable, under an Acceptable Credit Facility.

"**Acceptable Title Condition**": As defined in Schedule 17.1(iv).

"**ACH**": As defined in Section 3.4.

"**ADA**": The Federal Americans with Disabilities Act (as amended) and other similar Legal Requirements relating to persons with disabilities.

"**Additional Cure Period**": As defined in Section 13.1(l).

"**Additional Deposit**": As defined in Schedule 17.1(i)(1).

"**Additional Rent**": As defined in Section 3.2.

"**Affiliate**": With respect to any Person, any other Person that, directly or indirectly, Controls, is Controlled by or is under common Control with such Person. The term "**Affiliated**" shall have the correlative meaning.

"**Affiliate Subleases**": As defined in Section 9.2(a).

"**Agreed PSA Procedure**": As defined in Schedule 17.1(i)(1).

"**All-Risk Insurance**": As defined in Section 11.1(a).

"**Alterations**": As defined in Section 8.1(a).

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"**Alterations Fair Market Rent**": As defined in Section 1.3(c).

"**Alterations Payables**": As defined in Section 1.9(d).

"**Alterations Threshold**": As defined in Section 8.1(a).

"**Amortization Period**": As defined in Section 8.3(b).

"**Annual Capex Plan**": As defined in Section 8.3(a).

"**Annual Financial Statements**": For any Fiscal Year, consolidated statements of Tenant' s Parent and its Subsidiaries' income, stockholders' equity and cash flows for such Fiscal Year and the related consolidated balance sheet as of the end of such Fiscal Year, together with all notes thereto (if applicable), and together with statements of Consolidated Adjusted EBITDA, in each case in reasonable detail and setting forth in comparative form the corresponding figures for the preceding Fiscal Year, prepared in accordance with GAAP (other than the aforementioned statements of Consolidated Adjusted EBITDA) and audited by one of the "big four" accounting firms or another nationally recognized accounting firm selected by Tenant' s Parent and reasonably acceptable to Landlord (an "**Acceptable Accounting Firm**"). All Annual Financial Statements shall be accompanied by a narrative report describing the operations of Tenant' s Parent and its Subsidiaries in the form prepared for presentation to the senior management of Tenant' s Parent for the applicable Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Year.

"**Applicable Subleases**": As defined in Section 9.2(c).

"**Apportioned LO Capex Costs**": As defined in Section 8.3(e).

"**Approved NDA Form**": As defined in Section 20.21(e).

"**Approved Restoration Contract**": As defined in Section 12.5(a)(i).

"**Approved SNDA Form**": As defined in Section 14.1.

"**Arbitration Rules**": As defined in Section 27.1(a).

"**Arbitrator List**": As defined in Section 1.9(c).

"**Asset Purchase Agreement**": That certain Asset Purchase Agreement, dated as of October 28, 2020, by and among Tenant' s Predecessor, Copper Retail JV LLC, Copper BidCo LLC and the other parties thereto.

"**Asset Purchaser**": As defined in the definition of "Asset Sale".

"**Asset Sale**": With respect to any Person, the direct or indirect sale, assignment, conveyance, transfer or other disposition of all or substantially all of the business or assets (including real property assets) of such Person, whether held directly or through one or more Subsidiaries of such Person, to any other Person (an "**Asset Purchaser**") in one transaction or in a series of related transactions.

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"**Atlanta Property**": The Property located at 120 Penney Road, Forest Park, Georgia.

"**Atlanta Sublease Space**": 40% of the Gross Leasable Square Footage of the Atlanta Property subleased or proposed to be subleased in accordance with the provisions of Section 9.9; provided, however, that if it is not commercially reasonably practicable (given the floorplan and layout of the Atlanta Property (as the same is configured as of the Commencement Date)) for the Atlanta Sublease Space to be exactly 40% of the Gross Leasable Square Footage of the Atlanta Property, the Parties shall work together reasonably and in good faith to adjust the percentage of the Gross Leasable Square Footage of the Atlanta Property that would constitute the Atlanta Sublease Space, up or down, as necessary (it being agreed that the Parties shall keep such percentage as close to 40% as commercially reasonably practicable); provided, further, that (a) if such 40% is adjusted upwards or downwards by more than 1%, the Parties shall amend this Lease in good faith to equitably adjust the provisions herein related to the Atlanta Sublease Space and its effects on Base Rent, the Replacement Base Rent and Section 9.9 (including the applicable figures therein) and (b) in no event shall a Party be required to adjust upwards or downwards by more than 5%.

"**Award**": All compensation, sums or anything of value awarded, paid or received or payable in connection with any Condemnation.

"**Bankruptcy Code**": As defined in Section 3.5.

"**Bankruptcy Laws**": As defined in Section 13.1(d)(iii).

"**Base Rent**":

(a) During each of the first (1st) and second (2nd) Lease Years of the Initial Term, an annual amount equal to Thirty-Five Million Three Hundred Eighty Thousand Dollars ($35,380,000), as the same may be adjusted from time to time in accordance with the express terms and provisions of this Lease;

(b) During each subsequent Lease Year of the Initial Term commencing with the third (3rd) Lease Year, an annual amount equal to the Base Rent for the immediately preceding Lease Year (as the same may have been adjusted by subtracting the Base Rent Allocation Amounts allocable to any Terminated Properties), plus an amount equal to two percent (2%) of such prior Lease Year' s Base Rent (as the same may be adjusted from time to time in accordance with the express terms and provisions of this Lease); and

(c) During each Lease Year in any Renewal Term, an annual amount equal to the greater of (i) the Base Rent for the immediately preceding Lease Year (as the same may have been adjusted by subtracting the Base Rent Allocation Amounts allocable to any Terminated Properties) and (ii) the Fair Market Rent for such Renewal Term, as determined in accordance with the provisions of Section 1.3(c), as the same may be adjusted from time to time in accordance with the express terms and provisions of this Lease.

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(d) Notwithstanding anything to the contrary in this Lease: (i) with respect to the Atlanta Property, from and after the Sublease Option Start Date, if any, with respect to such Property, the Base Rent payable with respect to such Property shall be equal to the sum of (x) 60% of the Base Rent Allocation Amount of such Property and (y) the Replacement Base Rent for the Atlanta Sublease Space (as determined in accordance with Section 9.9); and (ii) with respect to the Haslet Property, from and after the Sublease Option Start Date, if any, with respect to such Property, the Base Rent payable with respect to such Property shall be equal to the sum of (x) 70% of the Base Rent Allocation Amount of such Property and (y) the Replacement Base Rent for the Haslet Sublease Space (as determined in accordance with Section 9.9).

"**Base Rent Allocation Amount**": With respect to any Demised Premises or Property, the allocable amount of Base Rent applicable to such Demised Premises or Property as set forth on Exhibit B, as the same may be adjusted pursuant to the terms of this Lease (including as set forth in clauses (b) and (c) of the definition of "Base Rent").

"**Best Insurer Rating**": As defined in Section 11.4(c).

"**BI Policy**": As defined in Section 11.1(c).

"**BI Policy Quote**" or "**BI Policy Quotes**": As defined in Section 11.1(c).

"**Binding PSA**": As defined in Schedule 17.1(i)(1).

"**BOMA Measurement Standard**": With respect to any Demised Premises as of any date of determination, the then current Standard Methods of Measurement from the Building Owners and Managers Association International, as the same is applicable to the particular use of such Demised Premises as of such date of determination.

"**Bond**": As defined in Section 20.17.

"**Broker**": As defined in Section 21.1.

"**Brookfield**": Brookfield Asset Management Inc., together with its successors.

"**Business Day**": Each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which national banks in the City of New York, New York, are authorized, or obligated, by law or executive order, to close.

"**Capital Expenditures**": With respect to any Demised Premises or Property, improvements and replacements that are properly capitalized in accordance with GAAP.

"**Cash**": Cash and cash equivalents and all instruments evidencing the same or any right thereto and all proceeds thereof.

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"**Casualty**": Any loss of or damage to or destruction of all or any portion of the Demised Premises.

"**Casualty Termination Amount**": As defined in Section 12.2(c).

"**Casualty Termination Date**": As defined in Section 12.2.

"**Change of Control**": The occurrence of any transaction or series of related transactions the result of which is that any Person or "group" (within the meaning of Section 13(d) or Section 14(d) of the ' 34 Act) directly or indirectly, acquires Control of any Tenant Party.

"**Claims**": As defined in Section 15.1(a).

"**Code**": The Internal Revenue Code of 1986 and, to the extent applicable, the Treasury Regulations promulgated thereunder, each as amended from time to time.

"**Commencement Date**": As defined in Section 1.3(a).

"**Condemnation**": (a) Any taking of all or a portion of any Demised Premises (i) in or by condemnation or other eminent domain proceedings pursuant to any applicable Legal Requirements, (ii) by reason of any agreement with any condemning authority in settlement of or under threat of any such condemnation or other eminent domain proceeding, or (iii) by any other means; (b) any de facto condemnation; or (c) any Temporary Condemnation. A Condemnation shall be considered to have taken place as of the date actual physical possession is taken by the condemning authority, regardless of the date on which the right to compensation and damages accrues under applicable Legal Requirements.

"**Condemnation Termination Date**": As defined in Section 12.4(b).

"**Consent Dispute**": As defined in Section 27.1.

"**Consolidated Adjusted EBITDA**": As defined in the OpCo Credit Agreement (which defined term shall, in the event the OpCo Credit Agreement is no longer in effect, nonetheless continue to apply).

"**Construction Professionals**": As defined in Section 12.1(a)(ii).

"**Construction Standards**": Those certain terms, conditions and requirements set forth on Schedule 8.1(b) attached hereto.

"**Contested Violation**": As defined in Section 4.2.

"**Continuing Guarantors**": As defined in Section 9.3(a).

"**Control**": With respect to any Person, (a) the ownership of more than fifty percent (50%) of the Equity Interests of such Person or (b) the power (whether or not exercised) to elect a majority of the directors of such Person or to exercise voting control of such Person or to

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otherwise direct or cause the direction of the management and policies of such Person through the ownership of Equity Interests, whether by contract or otherwise. Notwithstanding the foregoing, Control shall not be deemed to be absent with respect to any Person solely because another Person shall have the right to approve, consent to or veto one or more "major decisions". The terms "**Controlled by**", "**Controlling**" and "**under common Control with**" shall have their respective correlative meanings.

"**Control Transferee**": With respect to a Change of Control as to any Person, the Person acquiring Control of such Person in connection therewith.

"**Corporate Transaction**": Any Asset Sale, Change of Control, Division or Merger.

"**Costs and Expenses**": With respect to either Party' s right to be reimbursed for its cost and expenses under this Lease, the reasonable, documented and out-of-pocket costs and expenses (including reasonable out-of-pocket attorneys' fees) reasonably incurred by such Party in connection with the applicable matter.

"**Counterparty**": As defined in Section 7.3(b).

"**Counterparty Protection Notice**": As defined in Section 7.3(b).

"**Covenant Compliance Certification**": As defined in Section 20.21(b).

"**CPI**": Consumer Price Index for All Urban Consumers, United States City Average, All Items, Not Seasonally Adjusted, 1982-84=100, or any successor to such index, appropriately adjusted, or if no such index or successor index shall be published, such similar index, appropriately adjusted, as shall reasonably be designated by Landlord and reasonably acceptable to Tenant.

"**Current Title Policy**": As defined in Section 1.5(b)(i).

"**Deemed Approval Procedure**": With respect to any applicable matter with respect to which any Party (the "**Requesting Party**") requires the consent or approval of the other Party (the "**Deemed Approval Responding Party**"), that the Deemed Approval Responding Party' s consent or approval (as applicable) shall be deemed given if:

(a) the Requesting Party' s request for such consent or approval shall be in an envelope marked "PRIORITY" and shall contain the following bold-faced, conspicuous (i.e., in a font size that is not less than fourteen (14) point) legend at the top of the first page thereof: "FIRST NOTICE: THIS IS A REQUEST FOR APPROVAL OR CONSENT PURSUANT TO SECTION OF THAT CERTAIN DISTRIBUTION CENTER MASTER LEASE AMONG J. C. PENNEY PROPERTIES, LLC, J. C. PENNEY CORPORATION, INC. AND PENNEY TENANT II LLC. IF YOU FAIL TO PROVIDE A SUBSTANTIVE RESPONSE (E.G., APPROVAL, DENIAL OR REASONABLE AND GOOD FAITH REQUEST FOR CLARIFICATION OR MORE INFORMATION TO THE EXTENT THAT SUCH CLARIFICATION OR ADDITIONAL INFORMATION IS REASONABLY NECESSARY TO

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EVALUATE THIS REQUEST) TO THIS REQUEST FOR APPROVAL IN WRITING WITHIN FIFTEEN (15) DAYS, YOUR FAILURE MAY RESULT IN THE REQUEST BEING DEEMED APPROVED OR GRANTED", and shall be accompanied by any additional documentation as may be required pursuant to the express terms of this Lease; and

(b) the Deemed Approval Responding Party fails to substantively respond to such request in writing within such initial fifteen (15) day period, and a second notice requesting approval is delivered by the Requesting Party to the Deemed Approval Responding Party in an envelope marked "PRIORITY" and containing the following bold-faced, conspicuous (i.e., in a font size that is not less than fourteen (14) point) legend at the top of the first page thereof: "SECOND AND FINAL NOTICE: THIS IS A REQUEST FOR APPROVAL OR CONSENT PURSUANT TO SECTION OF THAT CERTAIN DISTRIBUTION CENTER MASTER LEASE AMONG J. C. PENNEY PROPERTIES, LLC, J. C. PENNEY CORPORATION, INC. AND PENNEY TENANT II LLC. IF YOU FAIL TO PROVIDE A SUBSTANTIVE RESPONSE (E.G., APPROVAL, DENIAL OR REASONABLE AND GOOD FAITH REQUEST FOR CLARIFICATION OR MORE INFORMATION TO THE EXTENT THAT SUCH CLARIFICATION OR ADDITIONAL INFORMATION IS REASONABLY NECESSARY TO EVALUATE THIS REQUEST) TO THIS REQUEST FOR APPROVAL IN WRITING WITHIN FIVE (5) BUSINESS DAYS, YOUR APPROVAL OR CONSENT SHALL BE DEEMED GIVEN" and the Deemed Approval Responding Party again fails to provide a substantive response to such request in writing within such additional five (5) Business Day period.

"**Deemed Approval Responding Party**": As defined in the definition of "Deemed Approval Procedure".

"**Default Rate**": On any date, an annual rate equal to five (5) percentage points (5%) above the Prime Rate, but in no event greater than the maximum rate then permitted under applicable Legal Requirements.

"**Deficiency Amount**": As defined in Section 12.5(a)(iii).

"**Demised Premises**": As defined in Section 1.1.

"**Designated Affiliate**": Any Affiliate of Tenant, of Brookfield or of Simon.

"**Disbursement Request**": As defined in Section 12.1(a).

"**Dispute**": As defined in Section 27.1.

"**Distribution Center**": As defined in the Recitals.

"**Division**": With respect to any Person that is a limited liability company organized under the laws of the State of Delaware, the division of such Person into two (2) or more Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under (a) Section 18-217 of the Delaware Limited Liability Company

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Act, (b) Section 17-220 of the Delaware Revised Uniform Limited Partnership Act or (c) any analogous action taken pursuant to any other applicable law.

"**dollars**" and "**$**": The lawful money of the United States.

"**Emergency Capex**": As defined in Section 8.3(d).

"**Emergency Capex Notice**": As defined in Section 8.3(d).

"**Encumbrance**": Any lien, encumbrance, claim, charge, mortgage, deed of trust, deed to secure debt, option, pledge, security interest or similar interest, title exception, hypothecation, easement, right of way, encroachment, judgment, covenant, conditional sale or other title retention agreement and other similar imposition, imperfection or defect of title or restriction on transfer or use.

"**Environmental Indemnity Agreement**": (a) The Initial Environmental Indemnity Agreement and (b) any Replacement Environmental Indemnity Agreement, as the same may be amended, supplemented or otherwise modified from time to time with Landlord' s prior written consent or otherwise in accordance with the terms of this Lease.

"**Environmental Laws**": Any and all federal, state, municipal and local laws, statutes, ordinances, rules, regulations, binding guidance or policies, orders, decisions, determinations, decrees or judgments, whether statutory or common law, as amended from time to time, now or hereafter in effect, or promulgated, pertaining to pollution, the environment, natural resources, public health and safety and industrial hygiene (in each case, as the same relate to Hazardous Substances), including the management, use, generation, manufacture, labeling, registration, production, storage, release, discharge, spilling, leaking, emitting, injecting, escaping, abandoning, dumping, disposal, handling, treatment, removal, decontamination, cleanup, transportation or regulation of or exposure to any Hazardous Substance, including the Industrial Site Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act (as it relates to Hazardous Substances).

"**EOD Termination**": As defined in Section 13.2(a).

"**EOD Termination Date**": As defined in Section 13.2(a).

"**Equity Interests**": With respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interests or participations that confer on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

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"**Estoppel Certificate**": A certificate of Tenant or Landlord, as the case may be, in the form attached hereto as Exhibit E, signed by an officer, managing member, managing or general partner or another representative of such party who is authorized to so sign the same.

"**Event of Default**": As defined in Section 13.1.

"**Excepted Liens**": As defined in Section 1.5(b)(i).

"**Excess Deductible Amount**": As defined in Section 11.2.

"**Excess Non-Structural Alterations**": As defined in Section 8.1(a).

"**Excluded Cessation**": As defined in Section 7.4(a).

"**Excluded Land**": With respect to each Property, the vacant, undeveloped land that is, as of the Commencement Date, included as part of the same parcel(s) as the Land on which the applicable Leased Improvements are located and determined as follows: (a) the precise delineation and legal description of the Excluded Land shall be determined by Landlord after the Commencement Date, subject to the remaining requirements of this definition and Section 1.7(a); (b) the Excluded Land shall not include any Land on which the Leased Improvements or any portion thereof (including, without limitation, all structures, parking areas, driveways, truck bays and any legally required setbacks pursuant to zoning regulations) are located as of the Commencement Date; and (c) the Excluded Land shall not include any land if the inclusion of such land (in the Excluded Land rather than the Demised Premises) or the development of such land would (i) block or impede in any material respect Tenant' s ingress to or egress from the Demised Premises as the same exist as of the Commencement Date (including existing paved ingress or egress), (ii) eliminate or reduce in any material respect (the parking areas, vehicular ingress, vehicular egress, turnaround, loading docks and truck bays that exist as of the Commencement Date (including access, and turning radius, to and from any truck bays) or (iii) cause the Demised Premises or any portion thereof to violate Legal Requirements (unless Landlord, at its sole cost and expense, cures any such violation of Legal Requirements and reimburses Tenant for any Costs and Expenses incurred by Tenant in connection with such violation or Landlord' s cure).

"**Excluded Land Co-Existence Agreements**": As defined in Section 1.7(b).

"**Excluded Land Cost Sharing Agreements**": As defined in Section 1.7(b).

"**Excluded Land Easements**": As defined in Section 1.7(b).

"**Excluded Taxes**": As defined in the definition of "Impositions".

"**Existing Envelope Alterations**": As defined in Section 1.3(c).

"**Expiration Date**": As defined in Section 1.3(a).

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"**Extra Extended Cure Default**": The following breaches, defaults or failures by Tenant under this Lease for which the Extra Extended Cure Period shall be available as and to the extent provided in Section 13.1(n):

(a) any failure by Tenant to perform Work in compliance with Section 8.1(d);

(b) any failure by Tenant to maintain the Demised Premises and/or Tenant' s Property in compliance with Section 10.1(a)(i);

(c) any failure by Tenant to perform any replacements or repairs with respect to the Demised Premises (or any portion thereof), including without limitation, any Required Work, in compliance with Section 10.1(a)(ii);

(d) following any Casualty or Condemnation, any failure by Tenant to restore the applicable Demised Premises in compliance with Section 12.2 or 12.5, as applicable;

(e) subject to Section 4.2, any failure by Tenant to cause the Demised Premises to comply with any applicable Legal Requirements; provided, however, that Tenant shall not be entitled to an Extra Extended Cure Period (i) with respect to any failure to pay or perform any obligation that would reasonably be expected to result in a lien attaching to any portion of the Demised Premises, unless Tenant Bonds (or agrees to Bond) such lien in accordance with the terms of this Lease or (ii) if, in Landlord' s reasonable judgment, (A) there then exists (or will exist during such Extra Extended Cure Period) a material risk of forfeiture of any portion of the Demised Premises or (B) such failure would cause Tenant to be in violation of, or cause the Demised Premises to be used in violation of, Section 7.2(b)(A)-(G);

(f) any failure by Tenant to conduct any Remediation required pursuant to and in accordance with any standards or requirements set forth in the Environmental Indemnity Agreement;

(g) any failure by Tenant to surrender (i) the Demised Premises on the Expiration Date in the Required Return Condition as set forth in Section 25.1 or (ii) any Property following the termination of this Lease as to such Property as a result of any Major Casualty or Major Condemnation; or

(h) any failure by Tenant to comply with the Property Documents; provided, however, that Tenant shall not be entitled to an Extra Extended Cure Period if (i) such failure would reasonably be expected to result in a lien attaching to any portion of the Demised Premises, unless Tenant Bonds (or agrees to Bond) such lien in accordance with the terms of this Lease or (ii) in Landlord' s reasonable judgment, there then exists (or will exist during such Extra Extended Cure Period) a material risk of forfeiture of the Demised Premises.

"**Extra Extended Cure Payment**": As defined in Section 13.1(n).

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"**Extra Extended Cure Period**": As applicable, the First Extra Extended Cure Period, the Second Extra Extended Cure Period, the Third Extra Extended Cure Period and/or the Fourth Extra Extended Cure Period.

"**Fair Market Rent**": As defined in Section 1.3(c).

"**Fair Market Rent Acceptance Notice**": As defined in Section 1.3(c).

"**Fair Market Rent Dispute**": As defined in Section 1.3(c).

"**Fair Market Rent Dispute Notice**": As defined in Section 1.3(c).

"**Financial Covenant Cure Period**": As defined in Section 13.1(h).

"**Financial Officer**": The chief financial officer, principal accounting officer, treasurer, assistant treasurer or controller of Tenant or Tenant' s Parent.

"**Financial Statements**": Individually and/or collectively, as the context may require, (a) all Annual Financial Statements and (b) all Quarterly Financial Statements.

"**First Extra Extended Cure Period**": As defined in Section 13.1(n).

"**Fiscal Year**": The fiscal year of Tenant' s Parent for public reporting purposes.

"**Fixtures**": As defined in Section 1.1(c).

"**Foreclosure**": Any judicial or non-judicial foreclosure, any exercise of a power of sale or any other enforcement by a Landlord Lender of any Landlord Financing Documents that results in the direct or indirect transfer of title to, or the equity interests in, a Property to a Landlord Lender, its designee or a third party following an event of default under such Landlord Financing Documents.

"**Fourth Extra Extended Cure Period**": As defined in Section 13.1(n).

"**Future Tax**": As defined in the definition of "Impositions".

"**GAAP**": United States generally accepted accounting principles, as in effect from time to time. The term "non-GAAP" shall have the correlative meaning.

"**General Contractor**": As defined in Section 12.5(a)(i).

"**General Tax Indemnity**": As defined in Section 4.3.

"**Go Dark**": With respect to any Demised Premises, to cease operations at or to abandon such Demised Premises other than, in each case, Excluded Cessations. The terms "**Going Dark**" and "**Goes Dark**" shall have the correlative meanings.

"**Go Dark Event**": As defined in Section 7.4(a).

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"**Go Dark Notice**": As defined in Section 7.4(a).

"**Go Dark Property**": As defined in Section 7.4(a).

"**Go Dark Start Date**": As defined in Section 7.4(a).

"**Go Dark Start Date Notice**": As defined in Section 7.4(a).

"**Go Dark Trigger Date**": As defined in Section 7.4(b).

"**Go Dark Trigger Event**": As defined in Section7.4(b).

"**Go Dark Trigger Property**": As defined in Section7.4(b).

"**Governmental Authority**": Any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official or other legislative, judicial, regulatory, administrative, governmental or quasi-governmental authority.

"**Gross Leasable Square Footage**": With respect to any Property as of any date of determination, the gross rentable square footage in the buildings and improvements comprising such Property, determined: (a) in accordance with the prevailing industry standard measurement method for properties substantially similar to the Property customarily used in the applicable jurisdiction in which such Property is located; or (b) if there is no such prevailing industry standard measurement method as of such date, in accordance with the BOMA Measurement Standard. In the event of any Dispute with respect to the calculation of Gross Leasable Square Footage or the appropriate measuring method with respect thereto, such Dispute shall be determined by expedited arbitration pursuant to Section 27.1 upon application by any Party. The terms "**Gross Leasable Square Foot**" and "**Gross Leasable Square Feet**" shall have correlative meanings. In any case where, pursuant to the provisions of this Lease, the Gross Leasable Square Footage of any portion of a Demised Premises or any portion of a Property is to be determined after the date hereof, such Gross Leasable Square Footage shall be calculated and determined in accordance with this definition (and either Party may, with the other Party' s consent, not to be unreasonably withheld, conditioned or delayed, cause the measurement of the applicable Demised Premises or Property in order to determine such Gross Leasable Square Footage).

"**Guarantor Financial Covenants**": Collectively, the requirement that the Lease Guarantors maintain, on an aggregate basis: (a) at all times during the Term from and after April 30, 2022, a Tangible Net Worth of not less than the Minimum TNW (which Tangible Net Worth shall be measured as of the end of each fiscal quarter commencing with the fiscal quarter ending on April 30, 2022); and (b) at all times during the Term, Liquid Assets of not less than the Minimum Liquidity Amount.

"**Haslet Property**": The Property located at 1701 Intermodal Parkway, Haslet, Texas.

"**Haslet Sublease Space**": 30% of the Gross Leasable Square Footage of the Haslet Property subleased or proposed to be subleased in accordance with the provisions of Section 9.9; provided, however, that if it is not commercially reasonably practicable (given the floorplan and

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layout of the Haslet Property (as the same is configured as of the Commencement Date)) for the Haslet Sublease Space to be exactly 30% of the Gross Leasable Square Footage of the Haslet Property, the Parties shall work together reasonably and in good faith to adjust the percentage of the Gross Leasable Square Footage of the Haslet Property that would constitute the Haslet Sublease Space, up or down, as necessary (it being agreed that the Parties shall keep such percentage as close to 30% as commercially reasonably practicable); provided, further, that (a) if such 30% is adjusted upwards or downwards by more than 1%, the Parties shall amend this Lease in good faith to equitably adjust the provisions herein related to the Haslet Sublease Space and its effects on Base Rent, the Replacement Base Rent and Section 9.9 (including the applicable figures therein) and (b) in no event shall a Party be required to adjust upwards or downwards by more than 5%.

"**Hazardous Substances**": Each and every element, compound, chemical mixture, emission, contaminant, pollutant, material, waste or other substance (including radioactive substances, whether solid, liquid or gaseous) which is defined, determined or identified as hazardous or toxic under any Environmental Law or for which liability or standards of care or a requirement for investigation or remediation are imposed under, or that are otherwise subject to, any Environmental Law, including, without limitation, asbestos, asbestos containing materials, urethane, polychlorinated biphenyls, any petroleum product, petroleum derived products and/or its constituents or derivatives, and any caustic, flammable or explosive materials. Without limiting the generality of the foregoing, the term shall mean and include:

(a) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products of a type and in a quantity regularly found at properties with a standard of operation and maintenance comparable to the applicable Property;

(b) "hazardous waste" and "regulated substances" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(c) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder;

(d) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder; and

(e) "hazardous materials" as defined under all applicable environmental protection statutes of each state and municipality in which the Demised Premises are located.

"**Impositions**": All taxes and assessments, including capital stock, franchise, margin and other state taxes, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes, including tax increases and re-assessments; assessments and supplemental assessments and public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not such improvements or benefits are completed or realized

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during the Term; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Demised Premises or the Properties and all interest and penalties thereon attributable to any failure in payment by Tenant which at any time prior to, during or in respect of (and, in each case, to the extent attributable to a period falling within) the Term hereof may be assessed or imposed on or in respect of or be a lien upon (a) Tenant, Landlord or either Party' s respective interest in the Demised Premises or the Properties, (b) the Demised Premises or any part thereof or any estate, right, title or interest therein, (c) any Rent, (d) any occupancy, leasing, operation, use or possession of, or sales from or activities conducted at, the Demised Premises or the Properties or any part thereof, or (e) any Tenant' s Property; provided, however, that nothing contained in this Lease shall be construed to require Tenant to pay (i) any franchise, corporate, estate, inheritance, succession, capital levy or capital stock tax of Landlord, (ii) any income, profit, excess profit, receipts or revenue tax upon the income or receipts of Landlord, (iii) any tax imposed solely because of the nature of the business entity of Landlord, (iv) any transfer, recordation or similar tax incident to a transfer (directly or indirectly) of Landlord' s interest in any Property and a concurrent transfer of Landlord' s interest as landlord under this Lease, in each case, except to the extent expressly provided herein to the contrary with respect to any such conveyance or transfer of all or any portion of a Property to Tenant in connection with the ROFO Right or (v) any mortgage recording tax imposed on or in connection with the recordation of any Landlord Financing Documents (collectively, "**Excluded Taxes**"); provided, further, that Impositions shall include any tax, assessment, levy or charge set forth in the foregoing clause (i) or (ii) that is levied, assessed or imposed in lieu of, or as a substitute for, any other tax, assessment or charge which, if it were in effect would constitute an "Imposition" which is Tenant' s responsibility under this definition (e.g., any real property tax that is recharacterized as a franchise tax or is a franchise tax or gross receipts tax that is the economic equivalent of a real property tax on all or a portion of Landlord' s gross receipts (as opposed to Landlord' s net income), so long as the foregoing franchise and/or gross receipts taxes are (1) assessed against owners of real property in their capacity as such (as opposed to any such taxes which are of general applicability) and (2) computed as if Landlord owned no real property other than the applicable Properties and no gross receipts other than those deriving from the applicable Properties). In the event that any ad valorem or future real property tax (a "**Future Tax**") is implemented or characterized by applicable Legal Requirements as an income tax upon Landlord and Tenant is thereby prohibited by any Legal Requirement from paying such Future Tax, Landlord and Tenant hereby agreeing that the Base Rent shall be increased by the amount necessary to provide Landlord the same net yield as Landlord would have received but for such implementation or characterization (as applicable) of such Future Tax, assuming for purposes of calculating the amount of such increase that the Base Rent or the Base Rent Allocation Amounts of the applicable Properties to which such Future Tax relates (as the case may be) were the only income of Landlord subject to such Future Tax.

"**Included Foreign Subsidiary**": As defined in the definition of "Lease Guarantor".

"**Indebtedness**": With respect to any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred

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purchase price of property for which such Person or its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable if such amounts were advanced thereunder, (c) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person is liable, (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss and (g) any other similar amounts.

"**Indemnified Party**": A Landlord Indemnified Party or Tenant Indemnified Party, as applicable.

"**Indemnifying Party**": As defined in Section 15.1(c).

"**Initial Cure Period**": As defined in Section 13.1(m).

"**Initial Environmental Indemnity Agreement**": That certain Environmental Indemnity Agreement, dated as of the Commencement Date, by Initial Lease Guarantors and Tenant in favor of Landlord, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Initial Lease Guarantors**": Those certain Persons set forth on Schedule 1.1.

"**Initial Lease Guaranty**": That certain Guaranty, dated as of the Commencement Date, by Initial Lease Guarantors in favor of Landlord, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Initial Required Deposit**": As defined in Schedule 17.1(i)(1).

"**Initial Term**": As defined in Section 1.3(a).

"**Insolvency Event**": As defined in Section 13.1(d)(iii).

"**Insurance Costs**": As defined in Section 11.4(b).

"**Insurance Requirements**": The terms and conditions of all insurance policies required to be maintained by Tenant by this Lease, and all requirements of the issuer of any such policy and of any applicable insurance board, association, organization or company in connection with the issuance or maintenance of any such policy.

"**Intended Lease Treatment**": As defined in Section 20.23.

"**JAMS**": As defined in Section 1.9(c).

"**Land**": As defined in Section 1.1(a).

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"**Landlord**": As defined in the Preamble.

"**Landlord Financing**": Any financing provided to Landlord or its Affiliates pursuant to Landlord Financing Documents.

"**Landlord Financing Documents**": As defined in Section 14.1.

"**Landlord Indemnified Matters**": As defined in Section 15.1(b).

"**Landlord Indemnified Parties**": Landlord and each of its successors, assigns and Affiliates, and their respective direct or indirect members, managers, partners, shareholders, officers, directors, agents and representatives.

"**Landlord Lender**": As defined in Section 14.1.

"**Landlord Mortgage**": As defined in Section 14.1.

"**Landlord Mortgagee**": As defined in Section 14.1.

"**Landlord Option**": As defined in Section 1.5(a).

"**Landlord Option Election**": As defined in Section 1.5(a).

"**Landlord Option Notice**": As defined in Section 1.5(a).

"**Landlord Option Property**": As defined in Section 1.5(a).

"**Landlord Tax Returns**": As defined in Section 4.1(b).

"**Landlord' s Pre-Existing Environmental Obligations**": As defined in the Environmental Indemnity Agreement.

"**Landlord' s Share**": As defined in Section 8.3(e).

"**Late Charge**": As defined in Section 3.3.

"**Lease**": As defined in the Preamble.

"**Lease Document Amendments**": As defined in Section 1.5(b)(ii).

"**Lease Documents**": Collectively, this Lease, the Side Letter, the Lease Guaranty and the Environmental Indemnity Agreement, in each case as the same may be amended, supplemented or replaced from time to time in accordance with the respective terms thereof and the terms of this Lease. The Lease Documents shall exclude any Severed Lease, Severed Lease Supplemental Environmental Indemnity Agreement and Severed Lease Supplemental Guaranty

"**Lease Guarantor**": Individually and/or collectively, as the context may require, (a) Tenant' s Parent, (b)(i) each domestic Subsidiary of Tenant' s Parent and (ii) each Included Foreign

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Subsidiary, in each case, other than Opco RE SPE and Opco IP SPE (and any current or future subsidiary of Opco RE SPE or Opco IP SPE) (each such Subsidiary described in this clause (b), a "**Required Subsidiary**") and (c) any other Person that enters into a Lease Guaranty for the benefit of Landlord, for so long as such Lease Guaranty remains in effect. For purposes of this definition, the term "**Included Foreign Subsidiary**" means each foreign Subsidiary of Tenant' s Parent (including any such foreign Subsidiary that exists as of the Commencement Date or that is formed thereafter) that, as of the end of any fiscal quarter, has assets (excluding unsecured intercompany receivables incurred in the ordinary course of business and not incurred, for the avoidance of doubt, in connection with a capital transaction) of Fifty Million Dollars ($50,000,000) or more, unless the execution and delivery of the Lease Guaranty (or any joinder thereto) by such foreign Subsidiary alone would result in the payment of taxes by Tenant' s Parent and/or its Affiliates in the aggregate of Five Million Dollars ($5,000,000) or more in the five (5) year period following such execution and delivery (as reasonably determined by Tenant' s Parent and/or its Affiliates, provided that Tenant shall deliver any back-up documentation reasonably requested by Landlord with respect to such determination promptly following such request). Notwithstanding the foregoing, for all purposes under this Lease relating to (A) financial reporting and calculations of Liquid Assets, Opening Balance Sheet TNW, Tangible Net Worth and the Guarantor Financial Covenants (subject to clause (B) below), "Lease Guarantors" may include (without duplication or double-counting) all Subsidiaries of Tenant' s Parent (including Opco RE SPE and Opco IP SPE (and their respective current or future subsidiaries)) and (B) for purposes of determining the Lease Guarantors' compliance with Guarantor Financial Covenants, "Liquid Assets" shall exclude any Liquid Assets held or owned by any Subsidiaries of Tenant' s Parent that are not Lease Guarantors if the distribution or dividend of such Liquid Assets by such Subsidiary to any applicable Lease Guarantors would result in a default or an event of default under any applicable credit facility to which such Subsidiary or any Tenant Party is a party or any other legal obligations then binding on such Subsidiary or Tenant Party (as applicable).

"**Lease Guaranty**": Individually and/or collectively, as the context may require, (a) the Initial Lease Guaranty and/or (b) any Replacement Guaranty delivered in accordance with the terms of this Lease, as the same may be amended, supplemented or replaced from time to time with Landlord' s prior written consent or otherwise in accordance with the express terms thereof or in accordance with the express terms of this Lease.

"**Lease Provisions**": As defined in Section 20.14.

"**Lease Severance Date**": As defined in Section 1.9(a).

"**Lease Severance Deadline**": As defined in Section 1.9(a).

"**Lease Severance Event of Default**": As defined in Section 13.1(l).

"**Lease Severance Notice**": As defined in Section 1.9(a).

"**Lease Year**": (a) The period commencing on the Commencement Date and ending on the last day of the calendar month in which the first (1st) anniversary of the Commencement Date occurs and (b) each subsequent period of twelve (12) full calendar months during the Term.

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"**Leased Improvements**": As defined in Section 1.1(b).

"**Legal Requirements**": All federal, state, county, municipal and other governmental statutes, laws, rules, policies, guidance, codes, orders, regulations, ordinances, permits, licenses, covenants, conditions, restrictions, judgments, decrees and injunctions (including common law and Environmental Laws) affecting, relating to or binding on Tenant, Landlord, any Demised Premises, Tenant' s Property or the use, possession, occupancy, operation, maintenance, repair, restoration, construction, Alterations or other Work of or with respect to any Demised Premises or Tenant' s Property, whether now or hereafter enacted and in force, including any of the foregoing which may (a) require repairs, modifications or alterations in or to any Demised Premises and/or Tenant' s Property, (b) in any way affect the use and enjoyment thereof, or (c) regulate the transport, handling, use, storage or disposal or require the cleanup or other treatment of any Hazardous Substance. For the avoidance of doubt, if and for so long as Tenant is not in violation of any Legal Requirements (including, without limitation, by reason of applicable provisions with respect to "grandfathering," notice, grace or cure periods, protest, dispute and contests, negotiations of terms and conditions of remedial action, and the like, provided that the foregoing are undertaken and continue to be pursued in accordance with the applicable provisions of this Lease), Tenant shall be deemed to be in compliance with all Legal Requirements (including Environmental Laws), and Tenant' s liability for any performance by Landlord of Tenant' s obligations to so comply (to the extent permitted in this Lease) shall be similarly conditioned or limited thereby.

"**Limited Reporting Package**": As defined in Section 1.9(d)(B)(4).

"**Liquid Assets**": Any of the following: (a) to the extent not "restricted" under GAAP and owned free of all security interests, liens, pledges, charges or any other encumbrances (in each case other than (x) in favor of any Acceptable Credit Facility and (y) "Specified Permitted Encumbrances" (as defined in the ABL Facility as in effect on and as of the date hereof)): (i) cash, (ii) certificates of deposit (with a maturity of two (2) years or less) issued by, or savings accounts with, any Qualified Financial Institution, (iii) monies held in cash reserves and other cash equivalents and (iv) readily marketable direct full faith and credit obligations of the United States of America or obligations unconditionally guaranteed by the full faith and credit of the United States of America, in each case due within one (1) year or less, (b) amounts available (which shall be determined without reference any anti-cash hoarding limitations) to be drawn under any Acceptable Credit Facility so long as (i) no event of default then exists under such Acceptable Credit Facility (except to the extent that the lenders under such Acceptable Credit Facility agree in writing to continue to accept, honor or fund requests for borrowing, drawing and funding under such Acceptable Credit Facility during such event of default) and (ii) no default or other failure to satisfy a borrowing condition then exists (unless and until such default or condition becomes an event of default (in which case, clause (b)(i) shall apply)) as a result of which any lender thereunder ceases or refuses to accept, honor or fund any request for borrowing, drawing or funding under such Acceptable Credit Facility, and (c) solely for the period of twelve months following such payment, the amount of any earn out payment paid pursuant to Section 1 of the Earnout Agreement (as defined in the Asset Purchase Agreement); provided, however, that "Liquid Assets" shall not include (A) any asset that constitutes a part of the Demised Premises or (B) any security deposits that Tenant may then be holding pursuant to executed subleases.

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"**LO Amendment Costs**": As defined in Section 1.5(b)(ii).

"**LO Capex Approval Period**": As defined in Section 8.3(b).

"**LO Capex Plan**": As defined in Section 8.3(b).

"**LO Capex Work**": As defined in Section 8.3(b).

"**LO Termination Date**": As defined in Section 1.5(a).

"**Local Remedies**": As defined in Section 20.5.

"**Longer-Term Cure Default**": As defined in Section 13.1(m).

"**LS Dispute Resolution Period**": As defined in Section 1.9(b).

"**MAI Appraisal**": An appraisal (a) prepared by (i) a Pre-Approved Appraiser or (ii) another appraiser reasonably acceptable to Landlord, (b) that satisfies the requirements of Title XI of the Federal Institution Reform, Recovery and Enforcement Act of 1989 and the regulations promulgated thereunder and (c) otherwise is in form and substance reasonably satisfactory to Landlord and Tenant. If the Parties are unable to agree as to the form and substance of an MAI Appraisal, either Party shall have the right to submit such dispute to expedited arbitration in accordance with the provisions of Section 27.1.

"**Major Casualty**": As defined in Section 12.2.

"**Major Casualty Termination Notice**": As defined in Section 12.2.

"**Major Condemnation**": As defined in Section 12.4(b).

"**Management Meeting Rights**": As defined in Section 20.21(a).

"**Master Affiliate Sublease**": As defined in Section 9.2(c).

"**Master Subtenant**": As defined in Section 9.2(c).

"**Material Discretionary LO Capex Work**": As defined in Section 8.3(b).

"**Material LO Capex Work**": As defined in Section 8.3(c).

"**Material Required LO Capex Work**": As defined in Section 8.3(c).

"**Merger**": With respect to any Person, any merger (including, without limitation, any forward or reverse merger), amalgamation or consolidation of such Person with or into any one or more other Persons. The terms "Merges" and "Merged" shall have their respective correlative meanings.

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"**Minimum Liquidity Amount**": As of any applicable date of determination, Liquid Assets of not less than an amount equal to the total Base Rent coming due under this Lease (which for purposes of this definition shall not take into account any adjustments for Optioned Sublease Space pursuant to clause (d) of the definition of Base Rent) during the twelve (12) month period commencing on the day immediately following such date of determination.

"**Minimum TNW**": As of any date of determination, a Tangible Net Worth of not less than fifty percent (50%) of the Opening Balance Sheet TNW.

"**Moody' s**": Moody' s Investors Service, Inc.

"**Net Award**": The entire Award payable in connection with a Condemnation, less (a) any sums paid pursuant to a separate claim that Tenant is permitted hereunder to make with respect to such Condemnation and (b) any costs and expenses incurred (directly or indirectly, including through a reimbursement obligation to a Landlord Lender) by Landlord in collecting such Award.

"**Net Optioned Sublease Rent**": As defined in Section 9.9.

"**Net Proceeds**": The entire proceeds of any insurance required under clauses (a) through (b) of Section 11.1 or Section 11.2 (excluding business interruption insurance proceeds, except to the extent the same are payable in respect of the Rent), less any expenses incurred (directly or indirectly, including through a reimbursement obligation to a Landlord Lender) by Landlord and/or any Tenant Party in collecting such proceeds.

"**New Lease**": As defined in Section 14.2.

"**No-Consent Sublease**": As defined in Section 9.2(a).

"**No-Consent Sublease Basket**": As defined in Section 9.2(a).

"**Non-Performing Party**": As defined in Schedule 8.1(b).

"**Non-Structural Alterations**": As defined in Section 8.1(a).

"**Notice**": A written notice given in accordance with Article XIX.

"**OFAC**": As defined in Section 22.1(a).

"**Officer' s Certificate**": A certificate of Tenant or Landlord, as the case may be, signed by an officer, managing member, managing or general partner or another representative of such party who is authorized to so sign the same.

"**Opco Closing Date**": The "OpCo Closing Date" under and as defined in the Asset Purchase Agreement. For the avoidance of doubt, the OpCo Closing Date is the same as the Commencement Date.

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"**OpCo Credit Agreement**": That certain Credit and Guaranty Agreement, dated as of the Commencement Date, by and among, *inter alia*, Tenant' s Parent, certain Subsidiaries thereof, GLAS USA, LLC, as administrative agent and collateral agent for the lenders party thereto from time to time, and such lenders, as the same may be amended, modified and/or refinanced from time to time.

"**Opco IP SPE**": Penney IP Holdings LLC, a Delaware limited liability company, together with its successors and assigns.

"**Opco Properties**": As of any date of determination, all properties owned, ground leased or otherwise leased (in each case, directly or indirectly) by Opco RE SPE and/or its Subsidiaries.

"**Opco RE SPE**": Penney Property Holdings LLC, a Delaware limited liability company, together with its successors and assigns.

"**Opening Balance Sheet TNW**": The Tangible Net Worth of Lease Guarantors set forth on the opening balance sheet of Tenant' s Parent as of the Commencement Date (a) minus the value of any negative inventory adjustments (i.e., write-downs) and (b) plus the value of any positive inventory adjustments (i.e., write-ups), as the case may be, applied in accordance with GAAP between the Commencement Date and February 1, 2022; provided, however, that a description of and rationale for such inventory adjustments shall be included in the Annual Financial Statements for each applicable period to the extent that any such inventory adjustments result in a net percentage increase or decrease of ten percent (10%) or more of the Tangible Net Worth of Lease Guarantors.

"**Operating Expenses**": All costs and expenses of any kind, nature, and description incurred in connection with the maintenance, operation, care and/or repair of any Demised Premises or Property that are not duplicative of other costs and expenses that Tenant is obligated to pay or reimburse Landlord for in accordance with the terms and provisions of this Lease. Operating Expenses shall expressly exclude the items set forth on Schedule 3.2(a)(ii).

"**Optioned Sublease Rent**": As defined in Section 9.9.

"**Optioned Sublease Space**": As defined in Section 9.9.

"**Optioned Sublease Space Base Rent**": As defined in Section 9.9.

"**Other Collateral**": As defined in Section 14.1.

"**Outstanding Alterations Payables**": As defined in Section 8.1(a).

"**Outstanding Alterations Payables Threshold**": As defined in Section 8.1(a).

"**Party**": Each of Landlord and Tenant.

"**Payment Date**": As defined in Section 3.1(a).

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"**Pending Removal Properties**": As defined in Section 1.3(c).

"**Performing Party**": As defined in Schedule 8.1(b).

"**Permissible Alterations**": Any Alterations that are not Required Removal Alterations.

"**Permitted Encumbrances**": With respect to any Demised Premises, (a)(i) liens imposed by law, such as mechanics' and materialmen' s liens, in each case for sums not yet overdue for a period of more than thirty (30) days after Notice from Landlord to Tenant of such liens (provided that Landlord' s failure to provide Notice to Tenant of any such lien shall not limit any obligation of Tenant to remove the same other than the commencement of the thirty (30) day period within which Tenant is obligated to remove such lien) or which Tenant is contesting (and which Tenant Bonds) in accordance with the terms of this Lease and (ii) other liens arising out of judgments or awards against Tenant, which Tenant is appropriately contesting through an appeal or other proceeding in accordance with the terms of this Lease, provided that any such lien is Bonded or the enforcement thereof is stayed pending such appeal or other proceeding, (b) liens for taxes, assessments or other governmental charges not yet due and payable or which Tenant is contesting (and which Tenant Bonds) in accordance with the terms of this Lease, (c) all Encumbrances, exceptions and other matters set forth in the title policies existing on the Commencement Date or that will be set forth in the title policies obtained by Landlord' s successor-in-interest in connection with such successor' s acquisition of the Properties on the PropCo Closing Date pursuant to the Asset Purchase Agreement, (d) all Legal Requirements, zoning or other restrictions or matters in effect from time to time pertaining to the use of the Properties, (e) liens or security interests evidenced and/or perfected by Uniform Commercial Code financing statement filings that relate to leases of Tenant' s Property (but not any portion of the Demised Premises) entered into by Tenant in the ordinary course of business, (f) all Property Documents, as the same are in effect as of the Commencement Date or, if applicable, such other date as of which such Demised Premises becomes subject to this Lease, in each case as the same may be amended, modified and/or supplemented from time to time in accordance with (and subject to) the terms and conditions of this Lease and such Property Documents, (g) the liens of any Landlord Financing Documents, (h) any utility easements and other minor non-monetary Encumbrances required by Governmental Authorities and/or utility providers made in the ordinary course of Tenant' s operation of the Demised Premises and (i) any other Encumbrances (i) entered into by Landlord in accordance with (and subject to) the terms of this Lease (to the extent Landlord is not expressly prohibited from entering into the same hereunder), (ii) as to which both Landlord and Tenant consent in their respective reasonable, good faith discretion or (iii) created by the actions or omissions of Tenant, its Affiliates (and their respective successors and assigns) or its subtenants and that were not consented to by Landlord as provided in clause (ii) above.

"**Permitted Go Dark Events**": As defined in Section 7.4(a).

"**Permitted Indebtedness**": Unsecured trade payables incurred by Tenant in the ordinary course of its business of leasing and operating the Demised Premises, provided that such unsecured trade payables (A) are not evidenced by a note, (B) are paid within sixty (60) days of the date incurred, and (C) do not exceed, in the aggregate, two percent (2%) of the aggregate outstanding principal balance of the ABL Facility and any other Acceptable Credit Facility.

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"**Permitted Second Chance Subleases**": As defined in Section 9.2(b).

"**Permitted Sublease**": As defined in Section 9.2(a).

"**Permitted Sublease Reports**": As defined in Section 9.2(b).

"**Permitted Use**": As defined in Section 7.2(a).

"**Person**" or "**person**": Any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

"**Pre-Agreed PSA Form**": The form purchase and sale agreement to be agreed to between the Parties, each acting reasonably and in good faith, by a date that is not later than thirty (30) days after the Opco Closing Date and on terms that are consistent with the applicable provisions of this Lease.

"**Pre-Agreed Severed Lease Form**": The form of Severed Lease to be agreed to between the Parties, each acting reasonably and in good faith, by a date that is not later than the PropCo Closing Date and on terms that are consistent with the applicable provisions of this Lease.

"**Pre-Approved Access Agreement Form**": As defined in Section 9.7.

"**Pre-Approved Appraiser**": Any of (a) Cushman & Wakefield, (b) Eastdil, (c) Jones Lang LaSalle, (d) CBRE, (e) HFF, Inc., (f) Newmark Knight Frank or (g) any of the respective successors of the foregoing.

"**Pre-Approved Broker**": Any of (a) Cushman & Wakefield, (b) Eastdil, (c) Jones Lang LaSalle, (d) CBRE, (e) HFF, Inc., (f) Newmark Knight Frank or (g) any of the respective successors of the foregoing.

"**Present Value**": With respect to any amount as of any date of determination, such amount discounted by a rate per annum equal to (a) the Prime Rate as of such date of determination, plus (b) three percent (3%) per annum.

"**Prime Rate**": On any date, a rate equal to the annual rate on such date publicly announced by JPMorgan Chase Bank, N.A. (provided, that if JPMorgan Chase Bank, N.A. ceases to publish such rate, the Prime Rate shall be determined according to the Prime Rate of Citibank, N.A. or, if Citibank, N.A. is not then publishing such rate, another nationally-recognized money center bank selected by Landlord and reasonably approved by Tenant) to be its prime rate for ninety (90)-day unsecured loans to its corporate borrowers of the highest credit standing, but in no event greater than the maximum rate then permitted under applicable Legal Requirements.

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"**Pro Rata Portion**": A fraction (expressed as a percentage), the numerator of which is the Gross Leasable Square Footage of the applicable Optioned Sublease Space, and the denominator of which is the total Gross Leasable Square Footage of the Atlanta Property or the Haslet Property, as applicable.

"**Prohibited Persons**": As defined in Section 22.1(a).

"**Prohibited Use**": As defined in Section 7.2(a).

"**PropCo Closing Date**": The "PropCo Closing Date" under and as defined in the Asset Purchase Agreement.

"**Property**" or "**Properties**": As defined in the Recitals.

"**Property Charges**": As defined in Section 3.2(a)(vi).

"**Property Document Action**": As defined in Section 7.3(b).

"**Property Documents**": All reciprocal easement, operating and/or construction agreements, easements, rights of way, covenants, conditions, restrictions, declarations and similar agreements or encumbrances affecting the access, ingress, egress, use, maintenance, construction, parking, signage, occupancy or operation of any Demised Premises or Property, in each case as the same may be in effect from time to time and whether or not the same may be of record.

"**Property MAE**": As defined in Section 7.3(a).

"**Property Requirements**": Collectively, all Insurance Requirements, Legal Requirements and the terms of conditions of all Property Documents.

"**Property Sale**": As defined in Section 17.1.

"**Property Termination**": As defined in Section 1.10.

"**Property Termination Date**": Any date on which this Lease terminates with respect to any (but not the entire) Demised Premises or any applicable portion thereof.

"**Proposed Go Dark Start Date**": As defined in Section 7.4(a).

"**PSA Closing Extension Right**": As defined in Schedule 17.1(i)(1).

"**Qualified Financial Institution**": As of any date of determination, any bank or other financial institution organized under the laws of the United States of America or any State that, as of such date, (a) has combined capital, surplus and undivided profits of at least $500,000,000 and (b) whose long term debt is rated "A-3" or higher by Moody' s or "A-" or higher by S&P (or a similar equivalent rating by at least one other "nationally recognized statistical rating organization" (as defined in Rule 436 under the Securities Act)).

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"**Quarterly Financial Statements**": For any fiscal quarter, consolidated statements of Tenant' s Parent and its Subsidiaries' income, stockholders' equity and cash flows for such period and for the period from the beginning of the then current Fiscal Year to the end of such fiscal quarter and the related consolidated balance sheet as of the end of such period, together with all notes thereto, and together with statements of Consolidated Adjusted EBITDA (which the Parties acknowledge is a non-GAAP measure), in each case in reasonable detail and setting forth in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year. All Quarterly Financial Statements shall be accompanied by a narrative report describing the operations and performance of Tenant' s Parent and its Subsidiaries in the form prepared for presentation to the senior management of Tenant' s Parent for the applicable fiscal quarter and for the period from the beginning of the then current Fiscal Year to the end of such fiscal quarter. For the avoidance of doubt, Quarterly Financial Statements need not be audited.

"**Reference Net Worth**": As defined in Section 9.3(a).

"**Reference Property Value**": With respect to each Property, the value assigned to such Property in Schedule 8.1.

"**Related User**" or "**Related Users**": With respect to any Person, such Person' s tenants, subtenants, licensees, agents, employees, customers, invitees, contractors, vendors, agents and representatives, permitted by such Person to use the premises in question.

"**Remediation**": As defined in the Environmental Indemnity Agreement.

"**Renewal Exercise Date**": As defined in Section 1.3(b).

"**Renewal Notice**": As defined in Section 1.3(b).

"**Renewal Option**": As defined in Section 1.3(b).

"**Renewal Term**": As defined in Section 1.3(b).

"**Renewal Term Commencement Date**": As defined in Section 1.3(d).

"**Rent**": Collectively, the Base Rent (including Replacement Base Rent) and all Additional Rent.

"**Replacement Base Rent**": As defined in Section 9.9.

"**Replaced Guarantors**": As defined in Section 3.6.

"**Replacement Environmental Indemnity Agreement**": As defined in Section 3.6.

"**Replacement Guarantors**": As defined in Section 3.6.

"**Replacement Guaranty**": As defined in Section 3.6.

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"**Reporting Package**": As defined in Section 20.21(c).

"**Requesting Party**": As defined in the definition of "Deemed Approval Procedure".

"**Required Capex Plan**": As defined in Section 8.3(a).

"**Required LO Capex Work**": As defined in Section 8.3(c).

"**Required Removal Alterations**": As defined in Section 8.2.

"**Required Return Condition**": As defined in Section 25.1.

"**Required Subsidiary**": As defined in the definition of "Lease Guarantor".

"**Required Work**": As defined in Section 8.1(c).

"**Restoration Conditions**": As defined in Section 12.1(a).

"**Restoration Escrow Agent**": As defined in Section 12.1(a).

"**Restoration Escrow Agreement**": As defined in Section 12.1(a).

"**Restoration Substantial Completion Date**": As defined in Section 12.5(a)(iii).

"**Restoration Threshold**": As defined in Section 12.1(a).

"**Retail Landlord**": Individually and collectively, J. C. Penney Corporation, Inc., a Delaware corporation, J. C. Penney Properties, LLC, a Delaware limited liability company, and JCPenney Puerto Rico, Inc., a Puerto Rico corporation, together with their respective successors and assigns.

"**Retail Master Lease**": that certain Retail Master Lease, dated as of the Commencement Date, between Retail Landlord, as landlord, and Retail Tenant, as tenant.

"**Retail Properties**": The one hundred sixty (160) retail properties owned or ground leased by Retail Landlord, as applicable, and leased to Retail Tenant pursuant to the Retail Master Lease.

"**Retail Tenant**": Penney Tenant I LLC, a Delaware limited liability company.

"**ROFO Acceptance Deadline**": As defined in Schedule 17.1(i).

"**ROFO Acceptance Notice**": As defined in Schedule 17.1(i).

"**ROFO Clearing PSA**": As defined in Schedule 17.1(i)(2).

"**ROFO Notice**": As defined in Schedule 17.1(i).

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"**ROFO Portfolio Sale**": As defined in Schedule 17.1(v)(6).

"**ROFO Price**": As defined in Schedule 17.1(i).

"**ROFO Property**": As defined in Schedule 17.1(i).

"**ROFO Right**": As defined in Schedule 17.1(i).

"**ROFO Right Termination**": As defined in Schedule 17.1(ii)(A).

"**S&P**": Standard & Poor' s Ratings Services, a Standard & Poor' s Financial Services LLC company, together with its successors.

"**S&P Insurer Minimum Rating**": As defined in Section 11.4(c)

"**S&P Insurer Rating**": As defined in Section 11.4(c).

"**SEC**": As defined in Section 20.21(b)(i).

"**Second Chance Sublease Waiting Period**": As defined in Section 9.2.

"**Second Extra Extended Cure Period**": As defined in Section 13.1(n).

"**Set-Off Rights**": As defined in Section 3.5.

"**Severed Landlord**": As defined in Section 1.9(a).

"**Severed Lease**" or "**Severed Leases**": As defined in Section 1.9(a).

"**Severed Lease Ancillary Documents**": As defined in Section 1.9(d).

"**Severed Lease Form Objection Notice**": As defined in Section 1.9(b).

"**Severed Lease No-Consent Sublease Basket**": As defined in Section 1.9(d).

"**Severed Lease Supplemental Environmental Indemnity Agreement**": As defined in Section 1.9(d).

"**Severed Lease Supplemental Guaranty**": As defined in Section 1.9(d).

"**Severed Master Affiliate Sublease**": As defined in Section 9.2(c).

"**Severed Property**" or "**Severed Properties**": As defined in Section 1.9(a).

"**Severed Tenant**": As defined in Section 1.9(a).

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"**Side Letter**": That certain letter agreement re: Distribution Center Master Lease – Exhibits and Schedules, dated as of the date hereof, by and between Landlord and Tenant and acknowledged and agreed to by the Lease Guarantors.

"**Simon**": Simon Property Group, Inc., together with its successors.

"**Single Appraiser**": As defined in Section 23.1(a).

"**SNDA**": As defined in Section 14.1.

"**State**": With respect to any Demised Premises, the state or commonwealth in which such Demised Premises is located.

"**State Specific Provisions**": The state specific provisions to be agreed to between the Parties, each acting reasonably and in good faith, by a date that is not later than the Propco Closing Date and then, once agreed, attached to the Side Letter (and, upon the severance of any Severed Property in such state, added to the applicable Severed Lease), it being agreed by the Parties that if any state specific provision is (a) required to be included in this Lease pursuant to a State' s laws or (b) required to give effect to, or make legally-enforceable, any provision of this Lease (which may include a waiver of a State' s laws that would otherwise apply and be inconsistent with the terms of this Lease), the same shall be included as a State Specific Provision.

"**Structural Alterations**": As defined in Section 8.1(a).

"**Structure Chart**": The organizational structure chart in effect as of the Commencement Date and attached hereto as Exhibit G, as such chart may be modified by Tenant from time to time in compliance with Article IX.

"**Sublease Broker**": As defined in Section 9.9.

"**Sublease Expenses**": The reasonable out-of-pocket costs and expenses paid or incurred by Tenant to third parties in connection with Optioned Sublease Space and the procurement of any sublease therefor, including, without limitation: (a) marketing or advertising expenses incurred in connection with the subleasing of the applicable Optioned Sublease Space; (b) brokerage commissions payable to the Sublease Broker and any subtenant' s broker; (c) tenant improvement allowances or similar tenant inducements (including free rent) provided to the subtenant in connection with its subleasing of the Optioned Sublease Space (or applicable portion thereof); (d) costs to separately demise the applicable Optioned Sublease Space (or applicable portion thereof) from the balance of the Demised Premises and costs to make Alterations necessary to prepare the Optioned Sublease Space (or the applicable portion thereof) for subtenant' s initial occupancy; and (e) attorneys' fees and expenses incurred in connection with the negotiation, drafting and execution of the applicable Third Party Sublease; provided, however, that for purposes of any calculations under Section 9.9, all Sublease Expenses (other than free rent, which shall be amortized as provided in Section 9.9(d)) will be deducted in the period they are actually paid, except that (i) Sublease Expenses paid prior to the Sublease Option Start Date shall be deducted from installments of Optioned Sublease Rent next coming due, commencing

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from and after the Sublease Option Start Date until such Sublease Expenses have been credited in full, and (ii) any Sublease Expenses that were paid during any prior period that were not credited in full during such prior period (whether because such Sublease Expenses were not finally determined and paid prior to the applicable Payment Date or otherwise) against the applicable installment of Optioned Sublease Rent shall be credited against future installments of Optioned Sublease Rent until such Sublease Expenses have been credited in full.

"**Sublease Option**": As defined in Section 9.9.

"**Sublease Option Notice**": As defined in Section 9.9.

"**Sublease Option Start Date**": As defined in Section 9.9.

"**Sublease Space**": As defined in Section 9.9.

"**Sublease Space Property Charges**": With respect to each Optioned Sublease Space, all Property Charges incurred or paid by Tenant from and after the Sublease Option Start Date, and reasonably allocable to such Optioned Sublease Space (including, without limitation, the Pro Rata Portion of all Impositions) net of all amounts collected by Tenant from subtenants of the Optioned Sublease Space on account of such Property Charges (it being understood that no amounts paid for Property Charges directly by any such subtenants to utility providers and other third parties shall (a) constitute Sublease Space Property Charges or (b) be included as revenue under the applicable Third Party Sublease); provided, however, that for purposes of any calculations under Section 9.9, all Sublease Space Property Charges will be deducted in the period they are actually paid, except that any Sublease Space Property Charges that were paid during any prior period that were not credited in full during such prior period (which prior period occurs after the Sublease Option Start Date),whether because such Sublease Space Property Charges were not finally determined and paid prior to the applicable Payment Date or otherwise, against the applicable installment of Replacement Base Rent shall be credited against future installments of Replacement Base Rent until such Sublease Space Property Charges have been credited in full.

"**Subsidiary**": With respect to any Person as of any date of determination, (a) any corporation more than fifty percent (50%) of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not, as of such date, the stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is, as of such date, owned by such Person and/or one or more Subsidiaries of such Person, and (b) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a fifty percent (50%) equity interest as of such date. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Lease shall refer to a Subsidiary or Subsidiaries of Tenant.

"**Subtenant SNDA**": As defined in Section 9.5.

"**Successor Landlord**": As defined in Section 14.2.

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"**Successor Tenant**": As defined in Section 9.3(b).

"**Surviving Obligations**": Upon any termination of this Lease as to less than all of the Demised Premises, (a) any obligations of Tenant relating to the remainder of the Demised Premises and (b) any obligations of Tenant (including with respect to any such Demised Premises that is no longer subject to this Lease) that expressly survive the expiration or termination of this Lease as to such Demised Premises.

"**Tangible Net Worth**": With respect to any Person, the "Total Stockholders' Equity" less the book value of such Person' s indefinite-lived intangible assets (net of accumulated impairment), in each case as calculated in accordance with GAAP and shown on the latest financial statements of such Person.

"**Tax**" or "**Taxes**": As defined in Section 4.3.

"**Temporary Condemnation**": A temporary requisition or confiscation of the use or occupancy of all or a portion of any Demised Premises, or the primary means of access thereto, by any Governmental Authority, whether pursuant to an agreement with such Governmental Authority in settlement of or under threat of any such requisition or confiscation or otherwise.

"**Tenant**": As defined in the Preamble.

"**Tenant Confidential Information**": As defined in Section 20.21(e).

"**Tenant Indemnified Matters**": As defined in Section 15.1(a).

"**Tenant Indemnified Parties**": Each Tenant Party and each of their respective successors, assigns and Affiliates, and their respective direct or indirect members, managers, partners, shareholders, officers, directors, agents and representatives.

"**Tenant Party**": Each of Tenant and each Lease Guarantor.

"**Tenant' s Acts**": Collectively, with respect to any matter, any (a) negligence or willful or intentional misconduct of any Tenant Party or any agents, representatives, employees, contractors or vendors of any Tenant Party, or (b) any breach by any Tenant Party of its obligations under any Lease Document to which each is a Party.

"**Tenant' s Go Dark Cure Right**": As defined in Section 7.4(c).

"**Tenant' s Go Dark Rights**": As defined in Section 7.4(a).

"**Tenant' s Maximum Annual Sublease Base Rent Contribution**": As defined in Section 9.9.

"**Tenant' s Parent**": Penney Intermediate Holdings LLC, a Delaware limited liability company.

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"**Tenant' s Predecessor**": J. C. Penney Corporation, Inc. (formerly known as J. C. Penney Company, Inc.), a Delaware corporation.

"**Tenant' s Property**": With respect to any Demised Premises, all trade fixtures and other assets (other than such Demised Premises itself and any property owned by a third party in connection with such Demised Premises) owned by any Tenant Party and primarily related to or used in connection with the operation of the business conducted on or about such Demised Premises, together with all replacements, modifications, additions, alterations and substitutions thereof or thereto, in each case subject to the terms and conditions of this Lease. Notwithstanding the foregoing, solely for purposes of Section 6.2, "Tenant' s Property" shall exclude Tenant' s inventory.

"**Tenant' s Proportionate Share**": One hundred percent (100%)

"**Term**": As defined in Section 1.3(a).

"**Terminated Property**": As defined in Section 1.10.

"**Termination Confirmation**": As defined in Schedule 17.1(i)(2).

"**Third Extra Extended Cure Period**": As defined in Section 13.1(n).

"**Third-Party Charges**": Additional Rent payable to a Person other than Landlord.

"**Third-Party Late Charges**": As defined in Section 3.3.

"**Third Party Sublease**": As defined in Section 9.2(a).

"**Title Company**": As defined in Section 1.5(b)(i).

"**Title Obligations**": As defined in Section 1.5(b)(i).

"**Transfer**": Any sale, assignment, transfer, mortgage, pledge, hypothecation, granting of any security interest, lease, sublease, sublicense, license, or occupancy arrangement, whether directly or indirectly, voluntarily or involuntarily, or by operation of law, including, without limitation, (a) any Corporate Transaction and (b) any written agreement, or grant of any option or right, to do or effectuate any of the foregoing, whether conditional, provisional or absolute.

"**Transfer Replacement Guarantors**": As defined in Section 9.3(a).

"**Transferee**": With respect to any Corporate Transaction, (a) the Control Transferee, if such Corporate Transaction consists of a Change of Control; (b) the Asset Purchaser, if such Corporate Transaction consists of an Asset Sale; or (c) the surviving entity(ies) resulting from any Merger or Division, if such Corporate Transaction is a Merger or Division.

"**Trust**": The New York common law trust created pursuant to the Trust Agreement.

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"**Trust Agreement**": That certain Amended and Restated Pass-Though Trust Agreement of the Trust, to be dated as of the PropCo Closing Date, by and between COPPER BIDCO LLC and GLAS TRUST COMPANY LLC.

"**Trust Certificateholders**": The holders from time to time of those certain Copper Property CTL Pass Through Trust Certificates and such other pass-through certificates issued by the Trust.

"**Trustee**": The trustee of the Trust from time to time. The initial Trustee is GLAS Trust Company LLC, a New York limited liability company, together with its successors.

"**Unsuitable for its Intended Use**": With respect to any Demised Premises, such Demised Premises being, following a Condemnation, of a size or in a state such that Tenant cannot (in its commercially reasonable judgment) (a) restore at least 80% of the Gross Leasable Square Footage of such Demised Premises as nearly as possible to its condition immediately prior to such Condemnation, or (b) continue to operate such Demised Premises on a commercially practicable basis in accordance with the then applicable Permitted Use, in compliance with all applicable Property Requirements and in a manner generally consistent with the manner in which such Demised Premises was operated prior to such Condemnation.

"**Use**": As defined in Section 15.1(a).

"**Useful Life**": With respect to any capital improvements or capital repairs made to a Property, the useful life for such improvements or repairs as determined in accordance with GAAP.

"**Utility Charges**": As defined in Section 3.2(a)(iii).

"**Work**": As defined in Section 8.1(d).

ARTICLE III
RENT AND OTHER MONETARY OBLIGATIONS

3.1 Base Rent.

(a) During the Term, Tenant shall pay to Landlord the Base Rent (including, if applicable, the Replacement Base Rent) in lawful money of the United States of America and legal tender for the payment of public and private debts, in the manner provided in Section 3.4. Subject to Section 3.1(b) below, the annual Base Rent for each Lease Year shall be payable in equal one twelfth (1/12th) monthly installments in advance on or prior to the first (1st) Business Day of each calendar month during such Lease Year (each, a "**Payment Date**").

(b) If the Commencement Date shall occur on a date which is other than the first (1st) Business Day of a calendar month, then (i) on the Commencement Date, Tenant shall pay to Landlord an amount equal to the pro rata portion of the monthly Base Rent that is due and payable for the period from the Commencement Date through the end of the calendar month in which the Commencement Date occurs and (ii) the first (1st) Payment Date shall occur on the first (1st) Business Day of the calendar month immediately succeeding the calendar month in which the Commencement Date occurs.

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3.2 **Additional Rent**. Tenant shall pay and discharge, as additional rent, the following (collectively, "**Additional Rent**"):

(a) Tenant' s Proportionate Share of all of the following costs, fees, expenses and charges (without duplication):

(i) Impositions;

(ii) Operating Expenses;

(iii) costs, fees and expenses and charges for electricity, power, gas, oil, water, sanitary and storm sewer, septic system refuse collection, security, and other utilities and services used or consumed in connection with the Demised Premises during the Term (collectively, "**Utility Charges**");

(iv) intentionally omitted;

(v) Insurance Costs; and

(vi) other costs, fees, charges and other amounts arising or payable under any Property Documents (together with Impositions, Utility Charges, Operating Expenses and Insurance Costs, collectively, "**Property Charges**");

(b) Costs and Expenses incurred (directly or indirectly) by Landlord in connection or associated with any of the following:

(i) the performance by Landlord of any of Tenant' s obligations under this Lease during the existence of an Event of Default;

(ii) the exercise and/or enforcement by Landlord of any of its rights and remedies under this Lease during the existence of an Event of Default;

(iii) other than (for the avoidance of doubt) as expressly set forth herein with respect to any Lease Document Amendments, any amendment or supplement to or modification or termination of this Lease requested by Tenant or Lease Guarantors or necessitated by any action of Tenant or Lease Guarantors, including, without limitation, any default by Tenant or any Lease Guarantor under the Lease Documents to which it is a party;

(iv) except to the extent otherwise expressly set forth in this Lease, any exercise by Tenant of any preferential right or option set forth herein; and/or

(v) any act undertaken by Landlord (or its counsel) at the request of Tenant, any act of Landlord performed on behalf of and at the request of Tenant and/or during the existence of an Event of Default, any review and monitoring of compliance by Tenant with the terms of this Lease; and

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(c) any other amounts, sums, charges, liabilities and obligations specifically required to be paid by Tenant under this Lease or which Tenant assumes or agrees to pay or may otherwise become liable for in accordance with the terms hereof.

Except with respect to amounts payable by Tenant to Landlord or as Landlord may otherwise direct from time to time, Tenant shall make all payments of Additional Rent directly to the applicable taxing authorities, service providers, vendors or other applicable third parties entitled to such payments. Tenant shall pay and discharge all Additional Rent as and when the same becomes due and payable; provided, however, that with respect to any amounts constituting Additional Rent that are billed to Landlord or any third party, but not to Tenant, Tenant shall pay such amounts (x) within five (5) Business Days following Landlord' s demand for such payment or (y) at least three (3) Business Days prior to the date on which such amounts are due to the applicable Person entitled to payment thereof, whichever is later.

3.3 Late Payment of Rent. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent (other than Third-Party Charges) shall cause Landlord to incur costs and administrative complications not contemplated hereunder, the exact amount and scope of which is presently anticipated to be extremely difficult to ascertain. Accordingly, if any regular installment of Base Rent (including, for the avoidance of doubt, the pro rata portion of Base Rent due and payable on the Commencement Date and any Replacement Base Rent) shall not be paid within five (5) days after its due date, Tenant shall pay to Landlord on demand, as Additional Rent, a late charge equal to the lowest of (a) two and one-half percent (2.5%) of the amount of such installment, (b) the amount of any late charge imposed by any applicable Landlord Lender as a result of such failure to pay such installment and (c) the maximum amount permitted by applicable Legal Requirements (such lowest amount, a "**Late Charge**"); provided, however, that there shall be no Late Charge imposed on the full amount of the Base Rent due for the remainder of the Term in the event that, pursuant to its rights under Section 13.2 of this Lease, Landlord exercises its remedy to accelerate such Base Rent. Tenant hereby agrees that any such Late Charge represents a fair and reasonable estimate of the costs and expenses (including economic losses) that Landlord will incur by reason of a late payment by Tenant. The Parties hereby agree that all such Late Charges shall constitute Rent and shall not be construed as creating a borrower/lender or debtor/creditor relationship between Landlord and Tenant. In addition to and not in limitation of the foregoing, if any installment or payment of Rent (other than Third-Party Charges) shall not be paid on or prior to the date the same is due and payable in accordance with this Lease, then the amount unpaid, excluding any Late Charges previously accrued, shall bear interest at the Default Rate from the due date of such installment or payment to the date of Tenant' s payment thereof in full, and Tenant shall pay such interest to Landlord on demand. The payment of such Late Charge or such interest at the Default Rate shall not constitute a waiver of, nor excuse or cure, any default under this Lease, nor prevent Landlord from exercising or enforcing any rights or remedies available to Landlord under this Lease, at law or in equity. Notwithstanding the foregoing, Tenant shall be responsible for the payment of all interest, fines, penalties, late charges and other costs and fees imposed by third parties ("**Third-Party Late Charges**") with respect to payments of Third-Party Charges which are not paid by Tenant when due hereunder; provided, however, that

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if Landlord shall elect in its discretion to pay (without any obligation to do so) any Third-Party Charges which are not paid by Tenant when due hereunder (together with any Third-Party Late Charges), Tenant shall pay Landlord interest at the Default Rate on all amounts so paid by Landlord and which Tenant fails to pay to Landlord within five (5) days after the date of Landlord' s payment thereof. Notwithstanding anything to the contrary herein, Landlord hereby agrees that if any Late Charge or interest at the Default Rate shall not be due and payable by Tenant hereunder and Tenant shall pay the same in error, then Landlord shall promptly refund the same to Tenant.

3.4 **Method of Payment of Rent and Other Sums and Charges**. Base Rent, Replacement Base Rent and Additional Rent to be paid by Tenant to Landlord in accordance with the terms of this Lease and all sums to be paid by Landlord to Tenant shall be paid by either (a) wire transfer of immediately available funds or (b) electronic funds transfer debit transactions through Automated Clearing House Debit ("**ACH**") and shall be initiated by the applicable Party for settlement on or before the applicable Payment Date (or when otherwise due and payable). Base Rent, Replacement Base Rent and such Additional Rent payable to Landlord shall be deemed paid on the date that Landlord actually receives funds through wire transfer or ACH and not on the date that Tenant initiates any such payment. On or prior to the Commencement Date, Landlord shall designate an account into which Tenant shall make all payments of Rent (other than, for the avoidance of doubt, Third-Party Charges) under this Lease, which designated account may be changed by Landlord upon not less than ten (10) Business Days' Notice to Tenant. With respect to any Third-Party Charges, Tenant shall, promptly after demand therefor by Landlord, deliver to Landlord evidence of Tenant' s payment thereof (which may be a copy of the transmittal letter or invoice and a check whereby such payment was made).

3.5 **Net Lease**. Landlord and Tenant acknowledge and agree that (a) this Lease is, and is intended to be, what is commonly referred to as a "net, net, net" or "triple net" lease, and (b) the Rent shall be paid absolutely net to Landlord, without notice or demand (except as otherwise expressly set forth herein), and without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense (collectively, "**Set-Off Rights**"), except to the extent otherwise expressly permitted hereunder, so that this Lease shall yield to Landlord the full amount or benefit of the installments of Base Rent (including Replacement Base Rent) and Tenant' s Proportionate Share of all Additional Rent throughout the Term, all as more fully set forth in Article V and subject to any other provisions of this Lease that expressly provide for the adjustment or abatement of Rent. Except as otherwise expressly set forth in this Lease, Tenant assumes full responsibility for the condition, use, operation and maintenance of the Demised Premises, and Landlord shall have no responsibility or liability therefor. If Landlord commences any proceedings for nonpayment of Rent, Tenant shall not interpose any counterclaim or cross claim or similar pleading of any nature or description in such proceedings (nor move or agree to consolidate in such proceedings any claim by Tenant in any other proceedings) unless the failure to interpose such counterclaim, cross claim or similar pleading would result in a waiver thereof. The obligations of Tenant hereunder are separate and independent covenants, and Tenant shall have no Set-Off Rights with respect to such obligations for any claimed or actual default or breach by Landlord or for any other reason whatsoever except to the extent otherwise expressly provided for hereunder. For the avoidance of doubt, Tenant shall not have, and hereby expressly and absolutely waives, relinquishes, and covenants not to assert, accept or take advantage of, any right

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to deposit or pay with or into any court or other third-party escrow, depository account or tenant account any disputed Rent, or any Rent pending resolution of any other dispute or controversy with Landlord. Tenant' s obligation to pay Rent under this Lease shall not be affected by any collection of rents by any Governmental Authority pursuant to a tax lien or otherwise. All Rent payable by Tenant under this Lease shall constitute "rent" for all purposes (including Section 502(b)(6) of the United States Bankruptcy Reform Act of 1998, as amended (the "**Bankruptcy Code**")).

3.6 Replacement Guarantors. On the Commencement Date, the Lease Guarantors executed and delivered to Landlord the Initial Lease Guaranty and the Initial Environmental Indemnity Agreement. Notwithstanding anything to the contrary in this Lease, so long as no Event of Default then exists, Tenant shall have the right from time to time during the Term to replace any Lease Guarantors ("**Replaced Guarantors**") with one or more other Persons that satisfy the following conditions (each, a "**Replacement Guarantor**"): (a) such Persons shall be (i) Affiliates of Tenant or (ii) otherwise constitute permitted Transfer Replacement Guarantors pursuant to Article IX; (b) Landlord shall have received evidence reasonably satisfactory to Landlord that (i) immediately following the effectiveness of such replacement, (A) in the case of any Replacement Guarantors that are Affiliates of Tenant, such Replacement Guarantors (together with any Continuing Guarantors) shall satisfy the Guarantor Financial Covenants and (B) in the case of any Transfer Replacement Guarantors, the Tangible Net Worth of such Transfer Replacement Guarantors and any applicable Continuing Guarantors shall not be less than the Reference Net Worth and (ii) in the case of either of the foregoing subclauses (A) or (B), immediately following the effectiveness of the applicable replacement, such Persons shall (together with any Continuing Guarantors) satisfy the Guarantor Financial Covenants; (c) such Persons shall have executed (in the case of clauses (ii) and (iii) below) and delivered to Landlord (i) an Officer' s Certificate attaching a copy of the Structure Chart then in effect, which shall include the Replacement Guarantor, (ii) a replacement guaranty (a "**Replacement Guaranty**"), (iii) a replacement environmental indemnity agreement (a "**Replacement Environmental Indemnity Agreement**"), in each case of clauses (ii) and (iii) above, in the form and substance of the existing Lease Guaranty and Environmental Indemnity Agreement, respectively, together with any revisions thereto as may be reasonably required by Landlord by reason of the applicable Replacement Guarantor' s state of formation or organizational structure, and (iv) if any Replacement Guarantor is not an Affiliate of Tenant, a legal opinion from counsel to such Replacement Guarantor, opining as to the due formation of such Replacement Guarantor, the authority of such Replacement Guarantor to enter into such replacement documents, and the enforceability of such documents against such Replacement Guarantor, which legal opinion shall be subject in each case to customary assumptions and qualifications reasonably acceptable to Landlord; and (d) Tenant shall have reimbursed Landlord for all Costs and Expenses incurred by Landlord in connection with the foregoing. Landlord hereby agrees that, in the event that any Replacement Guarantors become Lease Guarantors in accordance with this Section 3.6, the applicable Replaced Guarantors shall be released from their respective obligations under the existing Lease Guaranty and the existing Environmental Indemnity Agreement, in each case that accrue from and after the date of such release. Tenant shall cause each Required Subsidiary from time to time to be a Lease Guarantor and to execute a Lease Guaranty or a joinder to any existing Lease Guaranty, as applicable.

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ARTICLE IV
IMPOSITIONS

4.1 Impositions.

(a) Promptly following each payment by Tenant of Impositions in accordance with this Lease, Tenant shall furnish to Landlord copies of official receipts or other proof reasonably satisfactory to Landlord evidencing such payment. For the avoidance of doubt, Tenant' s obligation to pay Impositions shall be absolutely fixed upon the date such Impositions become a lien upon the Demised Premises or any part thereof during the Term, subject to the proviso in the immediately succeeding sentence and Section 4.2. Tenant shall also be responsible for all Impositions which, on the Commencement Date, are liens upon the Demised Premises or any part thereof; provided, however, that notwithstanding anything to the contrary herein, Landlord shall be responsible for all Impositions attributable to any period occurring prior to the Commencement Date pursuant to Section 4.1(f) below. If any Imposition may, at the option of the taxpayer, lawfully be paid in installments, whether or not interest shall accrue on the unpaid balance of such Imposition, Tenant may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto.

(b) During the Term, Landlord shall prepare and file or cause to be prepared and filed all tax returns and reports as may be required by Legal Requirements with respect to Landlord' s net income, gross receipts, franchise taxes and taxes on its capital stock and any other returns required to be filed by or in the name of Landlord (the "**Landlord Tax Returns**"), and Tenant, Tenant' s Parent and/or Lease Guarantor shall prepare and file all tax returns and reports that are required to be filed pursuant to any Legal Requirements with respect to or relating to the Demised Premises, Tenant' s Property and the respective other assets, properties and business operations of Tenant (other than any such amounts that are described in the exclusions set forth in Section 4.3).

(c) Any refund due from any taxing authority in respect of any Imposition paid by or on behalf of Tenant shall be paid over to and may be retained by Tenant, net of all of Landlord' s Cost and Expenses incurred in connection with assisting Tenant in obtaining such refund (to the extent Tenant requested such assistance).

(d) Each of Landlord and Tenant shall, upon the written request of the other Party, provide such data as may be maintained by the Party to whom such request is made with respect to the Demised Premises as may be necessary to prepare any required tax returns and/or reports. If any portion of any Demised Premises shall be classified as personal property for tax purposes, then Tenant shall file all personal property tax returns in such jurisdictions where the same must legally be filed. Each of Landlord and Tenant shall, to the extent such Party possesses the same, provide to the other Party, promptly following such Party' s written request, such cost and depreciation records necessary for filing tax returns for any property so classified as personal property. To the extent that Landlord is legally required to file personal property tax returns, Landlord shall provide to Tenant copies of any assessment notices indicating a value in excess of the reported value in sufficient time for Tenant to file a protest with respect thereto.

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(e) Promptly after request by Landlord, Tenant shall (i) notify Landlord of any changes to the amounts, schedules and instructions for payment of any Impositions of which Tenant has obtained knowledge and (ii) send Landlord any applicable bills for Impositions obtained by Tenant from the appropriate taxing authority or entity. Billings for reimbursement by Tenant to Landlord of personal property or real property taxes and any taxes due under the Landlord Tax Returns, if and to the extent Tenant is responsible for such taxes under the terms of this Section 4.1, shall be accompanied by copies of a bill therefor and payments thereof that identify the personal property or real property or other tax obligations of Landlord with respect to which such payments are made. So long as no Event of Default exists, Landlord will not voluntarily enter into agreements that would reasonably be expected to result in additional Impositions (other than de minimis additional Impositions or unless Landlord agrees to pay all such additional Impositions) without Tenant' s consent.

(f) Impositions imposed or assessed in respect of any tax-fiscal period during which the Term commences or terminates or expires shall be adjusted and prorated between Landlord and Tenant, whether or not such Imposition is imposed or assessed before or after such commencement, termination or expiration (as applicable), and Tenant' s obligation to pay Tenant' s pro rata share thereof in respect of the applicable tax-fiscal period during the Term shall survive such termination or expiration. Promptly after request by Tenant, Landlord shall pay its pro rata share of any Impositions relating to any tax period preceding the Commencement Date or during the tax period in which the Term commences so that Tenant can timely pay all Impositions relating to such periods and discharge any liens related thereto.

4.2 Permitted Contests. Upon not less than ten (10) days' prior written Notice to Landlord, at Tenant' s sole cost and expense, Tenant may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Imposition, Legal Requirement, Insurance Requirement, lien, attachment, levy, encumbrance or charge (each, for purposes of this Section 4.2, a "**Contested Violation**"), and upon Tenant' s request, Landlord shall reasonably cooperate with Tenant with respect to such contest at no cost or expense to Landlord; provided, however, that (a) if such proceedings relate to a contest of an unpaid Imposition, lien, attachment, levy, encumbrance or charge pursuant to any Legal Requirements, the commencement and continuation of such proceedings shall suspend the collection or enforcement thereof from or against Landlord and the Demised Premises; (b) neither the Demised Premises, the Rent nor any part or interest in either would be in any danger of being sold, forfeited, attached or lost pending the outcome of such proceedings; (c) if such proceedings relate to a contest of a Legal Requirement, neither Landlord nor Tenant would be in any danger of any criminal or material civil liability for failure to comply therewith pending the outcome of such proceedings; (d) unless (i) the amount subject to such Contested Violation has already been paid in full by Tenant (under protest or otherwise) or (ii) the Guarantor Financial Covenants are then satisfied, Tenant shall provide to Landlord such security (which security shall not be in an amount that exceeds 110% of the amount of such Contested Violation) including, without limitation, a cash escrow or a letter of credit, as may be reasonably required by Landlord to assure that such Contested Violation shall be paid, discharged or otherwise remedied (including any interest or penalties thereon) once the applicable contest is resolved and to prevent any sale or forfeiture of the applicable Demised Premises or of the Rent by reason of such nonpayment or noncompliance

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(as applicable); (e) in the case of an Insurance Requirement, (A) the policies and coverages required under Article XI shall be maintained and (B) such insurance policies shall not be cancelled and the carriers shall not increase the rates thereunder (unless Tenant pays the amount of such increase) or issue any statement indicating that coverage will be denied; (f) Tenant shall keep Landlord reasonably informed as to the status of, and, promptly following Landlord' s request, provide Landlord with copies of all material documents and correspondence relating to, such proceedings; and (g) if such contest shall be finally resolved against Landlord or Tenant, Tenant shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon and, if applicable, promptly comply with the applicable Legal Requirement or Insurance Requirement. Landlord, at Tenant' s expense, shall execute and deliver to Tenant such authorizations and other documents as may reasonably be required in any such contest, and, if reasonably requested by Tenant, Landlord shall join as a party therein and/or fully participate therein in conjunction with Tenant. The provisions of this Section 4.2 shall not be construed to permit Tenant to contest the payment of Base Rent. Without limiting any other provision of this Lease, Tenant shall indemnify, defend, protect and hold Landlord and all Landlord Indemnified Parties and the Demised Premises harmless from and against any and all liabilities, costs, fees, damages, expenses, penalties, fines and charges of any kind (including reasonable attorneys' fees, whether incurred in the enforcement of this indemnity or otherwise) that may be imposed upon Landlord, the Property and/or the Demised Premises in connection with any such contest and any loss resulting therefrom. Notwithstanding anything in this Section 4.2, any contest with respect to any Landlord Option Property following Landlord' s exercise of the Landlord Option shall be subject to Landlord' s prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

4.3 General Tax Indemnity. Tenant shall indemnify the Landlord Indemnified Parties against any fees or taxes (individually, a "**Tax**" and collectively, "**Taxes**") imposed by the United States or any taxing jurisdiction or authority of or in the United States (or foreign taxing authority, to the extent such foreign jurisdiction imposes such taxes as a result of the location of Tenant or activities of Tenant in such jurisdiction) in connection with the Demised Premises and/or the transactions contemplated herein (except to the extent otherwise expressly provided for herein); provided, however, that the amount of any indemnification payment in respect of Taxes shall be (a) decreased by any cash Tax benefit actually realized by the Landlord Indemnified Parties as a result of such Taxes; and (b) increased by an amount equal to any cash Taxes attributable to the receipt of such indemnification payment by the Landlord Indemnified Parties. This general tax indemnity ("**General Tax Indemnity**") shall exclude any Taxes: (i) except to the extent that the same are expressly included in the definition of "Impositions", which are based on net income or capital gains, or franchise or doing business taxes of a Landlord Indemnified Party imposed by a jurisdiction in which such Landlord Indemnified Party is otherwise resident for tax purposes or is subject to taxation as a result of any Property being located in such jurisdiction (but only to the extent of the portion of rent or gains attributable to any such Property); (ii) on capital or net worth (including minimum and alternative minimum Taxes measured by any items of Tax preference); (iii) to the extent such Taxes would not have been imposed if the Landlord Indemnified Party or any of its Affiliates had not engaged in activities or had a presence in the jurisdiction imposing such Taxes, in each case, that are unrelated to the transaction contemplated hereby; (iv) directly imposed with respect to a voluntary or involuntary transfer (directly or

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indirectly) by a Landlord Indemnified Party of an interest in all or any portion of any Demised Premises, a Landlord Indemnified Party or any other interest created under the Lease Documents; (v) imposed because the Landlord Indemnified Party is not a U.S. person; (vi) with respect to any period before the Commencement Date or after the termination of this Lease, whether in whole or with respect to a particular Property following the Property Termination Date with respect thereto; and (vii) that otherwise constitute Excluded Taxes. The foregoing exclusions shall not apply to any sales, use, transfer, recording and similar Taxes related to or arising out of Tenant' s Property or any Alterations which Tenant elects or is required to remove in accordance with the terms hereof. The General Tax Indemnity shall be subject to Tenant' s right to contest Taxes in the manner provided in Section 4.2. In the event of a claim under the General Tax Indemnity, Landlord shall send Tenant Notice thereof, together with Landlord' s calculation of any amount for which the Landlord Indemnified Parties are seeking indemnification pursuant to this Section 4.3 and accompanied by reasonable supporting documentation. Unless Tenant disputes such calculation (which dispute shall be resolved pursuant to expedited arbitration, as provided in Section 27.1), Tenant shall pay Landlord the amount set forth in Landlord' s Notice within thirty (30) days of its receipt thereof. Tenant shall be entitled to all future refunds of, and Tax savings of Landlord (but not any of its direct or indirect beneficial owners) resulting from or attributable to, any event giving rise to the payment of any indemnification payment under this Section 4.3.

ARTICLE V
NO ABATEMENT

5.1 No Termination, Abatement, Etc. Except as otherwise expressly provided in this Lease to the contrary, Tenant shall remain bound by this Lease in accordance with each term and provision hereof, and shall, except to the extent otherwise expressly provided herein, neither take any action without the written consent of Landlord to modify, surrender or terminate the same, nor seek or be entitled to any Set-Off Rights, or to deposit in trust or escrow or enjoin the payment of, or otherwise obtain equitable relief with respect to, the Rent or any other liabilities or obligations of Tenant hereunder. Without limiting the foregoing, except as may be otherwise expressly provided to the contrary in this Lease, the obligations of Tenant shall not be affected by reason of: (a) any Casualty or Condemnation with respect to all or any portion of any Demised Premises; (b) the lawful or unlawful prohibition of, or restriction upon, Tenant' s use of the Demised Premises or any portion thereof, or the interference with such use by any Person; (c) any claim that Tenant has or might have against Landlord by reason of any default or breach of any warranty, representation or covenant of or by Landlord under this Lease or any other Lease Documents to which Landlord is a party, at law, in equity or otherwise; (d) any Insolvency Event with respect to any Tenant Party or any Affiliate of a Tenant Party; or (e) for any other cause, whether similar or dissimilar to any of the foregoing, other than a discharge of Tenant from any such obligations pursuant to applicable Legal Requirements (and Tenant hereby waives and relinquishes any such right of discharge to the greatest extent now or hereafter permitted by applicable Legal Requirements). Tenant hereby specifically and unconditionally further waives all rights arising from any occurrence whatsoever that may now or hereafter be conferred upon it by law or in equity (i) to modify, surrender or terminate this Lease in whole or in part or quit or surrender the Demised Premises or any portion thereof (except with respect to any Terminated Property), or (ii) that may entitle Tenant to any abatement, reduction, suspension, deferment, stay or enjoining of the payment of the Rent or other sums payable by Tenant hereunder, except in each case as may be otherwise expressly provided to the contrary in this Lease.

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5.2 Assumption of Risk of Loss. Without limiting any other provision of this Lease, except in each case to the extent expressly provided in this Lease to the contrary, the entire risk of loss or of decrease in the value, utility or fitness for use, or enjoyment and beneficial use of the Demised Premises as a consequence of (a) any Casualty, thefts, riots or civil unrest, wars, terrorism, pandemic or other events of force majeure, (b) changes in applicable Legal Requirements or financial or economic circumstances or conditions, in each case either generally applicable or specifically applicable to Tenant, any Demised Premises and/or Tenant' s use of all or any portion of any Demised Premises, (c) foreclosures, attachments, levies or executions, or (d) Condemnations, in each case whether foreseen or unforeseen, is hereby unconditionally assumed by Tenant, and in no event shall any of the foregoing entitle Tenant to any Set-Off Right or any right to modify, amend, suspend or terminate this Lease.

ARTICLE VI
OWNERSHIP OF DEMISED PREMISES

6.1 Ownership of the Demised Premises.

(a) Each of Landlord and Tenant hereby acknowledges and agrees that it has executed and delivered this Lease with the understanding that (i) the Demised Premises is the property of Landlord as and to the extent conveyed to Landlord; (ii) Tenant has only the right to the possession and use of the Demised Premises upon the terms and conditions of this Lease; (iii) this Lease is a "true lease," is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, deed to secure debt, trust agreement, security agreement or other financing or trust arrangement, or any other agreement or arrangement other than a "true lease," and the economic realities of this Lease are those of a "true lease"; (iv) the business relationship between Landlord and Tenant created by this Lease and the other Lease Documents to which each is a party is, and at all times shall remain, that of a landlord and a tenant and shall not create or constitute a relationship of a borrower and a lender; (v) this Lease has been entered into by each Party in reliance upon the mutual covenants, conditions and agreements contained herein; and (vi) none of the covenants, conditions or agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership between Landlord and Tenant, to make them joint venture partners, to make Tenant an agent, legal representative, partner, subsidiary or employee of Landlord, or to make Landlord in any way responsible for any debts, obligations or losses of Tenant.

(b) Each of the Parties covenants and agrees not to: (i) file any income tax return or other associated documents; (ii) file any other document with or submit any document to any Governmental Authority; (iii) enter into any written contractual arrangement with any Person; or (iv) release any financial statements, in each case, that takes a position that (A) in general, asserts or could reasonably be construed to assert that this Lease is other than a "true lease" as well as an "operating lease" under GAAP, with Landlord as owner of the Demised Premises and Tenant as the tenant of the Demised Premises or (B) in particular, without limiting the generality of the foregoing, is inconsistent with any of the following: (1) the treatment of

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Landlord as the owner of the Demised Premises eligible to claim depreciation deductions under Section 167 or 168 of the Code with respect to the Demised Premises, (2) the reporting by Tenant of all Rent payments as rent expenses under Section 162 of the Code, and/or (3) the reporting by Landlord of the Rent payments (including, to the extent permissible under applicable Legal Requirements, any Third-Party Charges that may represent expenses of Landlord) as rental income under Section 61 of the Code, in each case, except to the extent required by applicable Legal Requirements or applicable accounting standards.

(c) Tenant hereby waives any claim or defense under or with respect to this Lease with respect to or against any of the Demised Premises or any Landlord Indemnified Parties based upon the characterization of this Lease as anything other than a true lease and as a master lease of all of the Demised Premises. Tenant hereby (i) stipulates as to, and covenants and agrees not to challenge or support or consent to the challenge of, the validity, enforceability or characterization of this Lease of the Demised Premises as a true lease and/or as a single, unitary, indivisible, non-severable instrument pertaining to the lease of all, but not less than all, of the Demised Premises, and (ii) stipulates as to, and covenants and agrees not to assert, take, omit to take, support or consent to any action inconsistent with, the agreements and understandings set forth in Section 1.2 or this Section 6.1.

6.2 Tenant' s Property. Subject to the provisions of Section 7.4 and Article XII, Tenant shall, during the Term, own (or lease, subject to the terms of this Lease) and maintain (or cause its Subsidiaries to own (or lease, subject to the terms of this Lease)) in connection with each Demised Premises adequate and sufficient Tenant' s Property, and shall maintain (or cause to be maintained) all such Tenant' s Property in good order, condition and repair, in each case as Tenant reasonably deems necessary and appropriate in the good faith exercise of Tenant' s reasonable commercial judgment to operate such Demised Premises in accordance with the Permitted Use and otherwise in compliance with all applicable Property Requirements and the terms and conditions of this Lease. If any of Tenant' s Property requires replacement to comply with the foregoing, Tenant shall promptly replace (or cause to be replaced) such Tenant' s Property with property of substantially the same or better quality or of comparable utility at Tenant' s sole cost and expense. Subject to the foregoing, including such replacement obligations, Tenant may sell, transfer, convey or otherwise dispose of Tenant' s Property in the ordinary course of Tenant' s business so long as the same does not make or result in any Encumbrances on the Demised Premises or result in an Event of Default, including any failure of Lease Guarantors to satisfy the Guarantor Financial Covenants. Tenant shall remove all of Tenant' s Property from each Demised Premises upon the Expiration Date or any earlier Property Termination Date with respect to such Demised Premises (including all telecommunications cabling and any rooftop antennas or communications installations), except as may be otherwise agreed by Landlord in its sole discretion and except to the extent that Tenant or any Affiliate of Tenant is acquiring such Demised Premises on or about such Expiration Date or Property Termination Date (as applicable) or has transferred ownership of such Tenant' s Property to a Successor Tenant, Landlord or Successor Landlord in accordance with the terms of this Lease. Tenant shall repair and restore all damage caused by such removal in compliance with terms of this Lease. Without limiting the foregoing or any other rights or remedies of Landlord, except as otherwise expressly provided in this Section 6.2, any Tenant' s Property that Tenant fails to so remove from the Demised Premises at the end

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of the Term shall be deemed abandoned by Tenant and shall become the property of Landlord or the applicable Successor Landlord. For the avoidance of doubt, Tenant' s Property shall not constitute Alterations or Leased Improvements.

ARTICLE VII
CONDITION AND USE OF DEMISED PREMISES; PROPERTY DOCUMENTS

7.1 Condition of the Demised Premises. Tenant hereby acknowledges receipt and delivery of complete and exclusive possession of the Demised Premises, subject in each case to the Permitted Encumbrances and the terms of this Lease. Tenant hereby acknowledges and confirms that for a substantial period prior to and up to and including the Commencement Date, Tenant' s Predecessor and/or its Subsidiaries were in continuous ownership and possession of the Demised Premises, and Tenant is accordingly fully familiar therewith and has examined and otherwise has knowledge of the condition of the Demised Premises prior to the execution and delivery of this Lease and has found the same to be in good order, condition and repair (to Tenant' s knowledge) and otherwise satisfactory to Tenant for the Permitted Use. Regardless, however, of any knowledge, examination or inspection made by or on behalf of Tenant and/or any of its Affiliates, and whether or not any patent or latent defect or condition may have been revealed or discovered thereby, Tenant hereby acknowledges and agrees that Tenant leases the Demised Premises from Landlord "as is," "where is" and "with all faults" in its present condition as of the Commencement Date. Except with respect to Landlord' s Pre-Existing Environmental Obligations, Tenant hereby irrevocably, unconditionally and absolutely waives and relinquishes any claim or action against Landlord whatsoever in respect of the condition of the Demised Premises, including any patent or latent defects or adverse conditions not discovered or discoverable or otherwise known or unknown by Tenant as of the Commencement Date.

LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN FACT OR IN LAW, IN RESPECT OF THE DEMISED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, KNOWN AND UNKNOWN, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND COMPLIANCE WITH ALL ENVIRONMENTAL LAWS AT ALL TIMES DURING THE TERM, IT BEING ACKNOWLEDGED AND AGREED BY LANDLORD, HOWEVER, THAT LANDLORD SHALL HAVE SOLE RESPONSIBILITY AND LIABILITY FOR THE LANDLORD' S PRE-EXISTING ENVIRONMENTAL OBLIGATIONS RELATING TO PERIODS OF TIME PRIOR TO THE COMMENCEMENT OF THE TERM.

Tenant' s Initials: /s/ DW Landlord' s Initials: /s/ DW /s/ BW

Without limiting the foregoing, except for Landlord' s Pre-Existing Environmental Obligations with respect to any of the Properties as to which Tenant does not waive or release any claims, Tenant realizes and hereby acknowledges that factual matters now unknown to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses that are presently

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unknown, unanticipated and unsuspected, and Tenant further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit Landlord and all other Landlord Indemnified Parties from any and all such unknown losses, damages, liabilities, costs and expenses.

7.2 Use of the Demised Premises; Compliance with Laws.

(a) During the Term, each Property (and the portion of the Demised Premises located therein) shall be used solely for (i) the operation of a warehouse and distribution center of the same or better quality as the Distribution Center at such Property as of the Commencement Date, (ii) upon not less than forty-five (45) days' Notice to Landlord, for any other use that may be proposed by Tenant and approved by Landlord in Landlord' s reasonable discretion, and (iii) such incidental or ancillary office use as may be reasonably related and complementary to the foregoing uses (each such permitted use, individually, and all such permitted uses, collectively, as the context may require, the "**Permitted Use**"), but in no event for any Prohibited Use and subject, in each case, to all applicable Property Requirements, and for no other purpose. As used herein, "**Prohibited Use**" means each of the following: (A) any use that produces (1) noise or sound that is objectionable due to intermittence, high frequency, shrillness or loudness, (2) noxious odors, (3) noxious, toxic, caustic or corrosive fumes, fuel or gas, (4) dust, dirt or fly ash in excessive quantities or (5) fire, explosion or other damaging or dangerous hazards; (B) any manufacturing, distilling, refining, smelting, agriculture, mining operation or other "heavy industrial" use; and (C) a junk yard or dump.

(b) Subject to the provisions of Sections 7.3 and 7.4, Tenant hereby acknowledges and agrees that the foregoing covenants and restrictions with respect to Tenant' s use of the Demised Premises are a material inducement to Landlord entering into this Lease and that Landlord would not enter into this Lease without such inducement. Tenant shall not use or occupy or permit the Demised Premises to be used or occupied, nor do or permit anything to be done in or on any Demised Premises, in a manner which would reasonably be expected to (A) violate any applicable Property Requirement in any material respect, (B) make void or voidable or cause any insurer to cancel any insurance required to be maintained by Tenant or Landlord under Article XI, (C) make void or voidable, cancel or cause to be cancelled, or release any material warranties, guaranties or permits with respect to such Demised Premises of which Tenant is notified, (D) cause structural injury to any of the Leased Improvements with respect to such Demised Premises, (E) diminish in any material respect the market value of such Demised Premises, (F) constitute a public or private nuisance, (G) without further action or the passage of time, make possible a claim of adverse use or possession or an implied dedication with respect to such Demised Premises, or otherwise impair in any material respect Landlord' s title thereto, or (H) subject the Demised Premises or this Lease to any Encumbrance other than Permitted Encumbrances (including, without limitation, any subleases entered into in accordance with this Lease). Tenant shall, at its expense, (1) comply in all material respects, (2) use commercially reasonably efforts to cause any other Person occupying part of any Demised Premises to comply in all material respects and (3) cause each Demised Premises to comply in all material respects, in each case, with all applicable Property Requirements.

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7.3 Property Documents.

(a) Tenant shall, at Tenant' s expense, at all times promptly and faithfully abide by, discharge and perform in all material respects all of the covenants, conditions and agreements contained in all Property Documents on the part of Landlord or Tenant to be kept and performed thereunder (regardless of whether Landlord or Tenant is the party to such Property Documents). Without limiting the generality of the foregoing or any of Tenant' s obligations under Section 7.4, Tenant shall not violate in any material respect the terms and conditions of any applicable Property Document (any such violation, a "**Property MAE**").

(b) Tenant shall not alter, modify, amend or terminate any Property Document, exercise any consent or approval right thereunder or enter into any new Property Document (each, a "**Property Document Action**") without, in each case, the prior written consent of Landlord, which may be granted or withheld in Landlord' s reasonable discretion. Each Party shall promptly deliver to the other Party any notices of default, notices of termination or other material notices received by such Party under any Property Document from the applicable counterparty thereto or thereunder (each, a "**Counterparty**"), including, for the avoidance of doubt, any notices that relate to any actual or threatened defaults or enforcement actions of or against Tenant or Landlord under or in connection with such Property Documents. Tenant shall reasonably cooperate with Landlord, and (so long as no Event of Default exists), Landlord shall reasonably cooperate with Tenant as may be necessary in connection with Landlord' s or Tenant' s (as applicable) compliance with its respective obligations under any Property Documents, which cooperation shall (in the case of Tenant) include Tenant' s delivery, at its sole cost and expense, of any required financial reporting to (and/or, subject to the terms of this Section 7.3, obtaining necessary consents or approvals from) the applicable Counterparties. At Tenant' s request, and provided that no Event of Default then exists, if and to the extent that Landlord has any rights to receive notice and/or cure rights pursuant to the express terms of any Property Document (it being agreed that Landlord shall not be required to amend any such Property Document in order to provide Tenant with any such notice and cure rights), Landlord shall request and, at Tenant' s sole cost and expense, use commercially diligent efforts to cause the applicable Counterparty to provide Tenant with such available notice and/or cure rights; provided, however, that (1) if at any time Tenant reasonably determines that Landlord is not using commercially diligent efforts to obtain such available notice and cure rights from the applicable Counterparty, then Tenant may, but shall not be obligated to, deliver to Landlord Notice thereof (a "**Counterparty Protection Notice**") and informing Landlord of Tenant' s desire to request such available notice and/or cure rights directly from such Counterparty and (2) if, within five (5) Business Days following Tenant' s delivery of such Counterparty Protection Notice, Landlord fails to obtain such available notice and/or cure rights from the applicable Counterparty and no Event of Default then exists, Tenant shall have the right to request such available notice and/or cure rights directly from such Counterparty, provided that (I) Tenant shall copy Landlord on all written communications (including email requests) and (II) if Landlord requests in writing, Tenant shall include Landlord on all telephonic, Zoom (and similar technology) and written communications with such Counterparty (and Landlord agrees to make its representatives available at mutually-convenient times so as to facilitate such communications).

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(c) Landlord shall have the right from time to time to take or enter into any Property Document Action on the following conditions: (i) not less than ten (10) days prior to the effective date of any proposed Property Document Action, Landlord shall provide Tenant with Notice thereof (which shall include a copy of any applicable draft amendment, modification or other document memorializing such Property Document Action), and an opportunity to consult with Landlord with respect thereto and (ii) Tenant' s prior written consent shall be required with respect to any such Property Document Action if such Property Document Action would: (A) have any material adverse effect on any access (including for inbound and outbound trailers), parking, ingress or egress to or from (including the modification of any entry or exit points), or the visibility of, the applicable Demised Premises or Property; or (B) increase in any material respect Tenant' s obligations, or decrease in any material respect Tenant' s rights, under such Property Document or this Lease. If Tenant' s prior written consent shall be required with respect to a Property Document Action pursuant to the immediately preceding sentence, such consent shall be granted or withheld (1) in Tenant' s commercially reasonable judgment in the case of any Property Document Action described in clause (B) above and (2) in Tenant' s sole discretion in the case of any Property Document Action described in clause (A) above.

7.4 Use of Demised Premises; Going Dark.

(a) Any use of the Demised Premises during the Term shall be in accordance with the Permitted Use. Notwithstanding the foregoing, the Parties hereby agree that Tenant shall have the right to Go Dark at one or more of the Properties at any time and for any period of time without being in breach of this Lease (a "**Go Dark Event**", and any Property subject to a Go Dark Event, a "**Go Dark Property**"), so long as, in each case, (A) Tenant shall provide Landlord not less than thirty (30) days' notice of such Go Dark Event (a "**Go Dark Notice**"), which Go Dark Notice shall specify the date as of which Tenant intends to Go Dark (the proposed date of the Go Dark Event, the "**Proposed Go Dark Start Date**", and the actual start date of a Go Dark Event, the "**Go Dark Start Date**") at such Property, (B) such Go Dark Event shall not result in a Property MAE and (C) Tenant shall continue to comply with all other terms of this Lease applicable to such Property during such period (it being agreed that, for the avoidance of doubt, this clause (C) shall not require Tenant to operate the applicable Property (or any portion thereof) or any Fixtures located therein), Tenant hereby agreeing that, except upon a removal of such Property from this Lease following the delivery by Landlord of a Landlord Option Notice, there shall be no reduction or change in the Rent following any Go Dark Event until such removal (the foregoing rights of Tenant, collectively, "**Tenant' s Go Dark Rights**"). Tenant further agrees that within five (5) Business Days of a Go Dark Event, Tenant shall provide written notice that sets forth the Go Dark Start Date (a "**Go Dark Start Date Notice**"). Supplementing the foregoing, in no event shall a Go Dark Event include the cessation of Tenant' s operations at any Property that is due to any of the following (each, an "**Excluded Cessation**"): (1) a closure of the applicable Distribution Center that is required pursuant to applicable Legal Requirements in the local jurisdiction in which such Demised Premises is located, including mandatory closures, (2) temporary closures necessitated by or reasonably advisable (as determined by Tenant in its good faith judgment) in connection with emergencies, civil unrest, global pandemics (e.g., the COVID-19 pandemic) and other material health-related events affecting a substantial portion of the national or applicable State or local population or other similar extraordinary events, (3) intentionally omitted, (4)

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temporary closures necessitated by a Casualty or Condemnation, (5) temporary closures to the extent necessary or reasonably advisable in connection with Alterations undertaken by Tenant in accordance with the terms and conditions of this Lease (including Article VIII and Article XII), (6) discretionary (and temporary) closures in the commercially reasonable judgment of Tenant for not more than two (2) weeks in any twelve (12) month period and (7) ordinary course closures outside of regular business hours (collectively, and together with Tenant' s Go Dark Rights, "**Permitted Go Dark Events**").

(b) If a Go Dark Event (other than an Excluded Cessation) occurs and continues for more than ninety (90) days beyond the earlier of (i) the date that is thirty (30) days after the Proposed Go Dark Start Date and (ii) the Go Dark Start Date (such date, the "**Go Dark Trigger Date**", such event, a "**Go Dark Trigger Event**", and the related Go Dark Property, a "**Go Dark Trigger Property**"), then from and after the Go Dark Trigger Date (subject to any limitations contained in Section 1.5), Landlord may elect to classify such Go Dark Trigger Property as a Landlord Option Property and Landlord shall have the right to exercise a Landlord Option Election with respect to such Go Dark Trigger Property in accordance with Section 1.5 of this Lease.

(c) Notwithstanding the foregoing, so long as no Event of Default then exists, if Tenant re-commences operations at (in accordance with the Permitted Use) any Landlord Option Property and notifies Landlord in writing that it has recommenced operations prior to the date (if any) on which Landlord delivers a Landlord Option Notice with respect thereto ("**Tenant' s Go Dark Cure Right**"), then Landlord shall have no right to send such Landlord Option Notice with respect to such Landlord Option Property or to remove such Property from this Lease pursuant to Section 1.5; provided, however, that (i) if a further Go Dark Event (other than a Permitted Go Dark Event) occurs with respect to any such Landlord Option Property within twelve (12) months after Tenant so re-commences operations at such Landlord Option Property, then Landlord may immediately send a Landlord Option Notice with respect to such Landlord Option Property (which Landlord Option Notice shall specify an LO Termination Date that is no earlier than thirty (30) days after the delivery of such Landlord Option Notice to Tenant) and Tenant shall thereafter comply with all of its applicable obligations under this Section 7.4(c) with respect thereto and (ii) Tenant shall not be permitted to exercise Tenant' s Go Dark Cure Rights (A) more than once for any particular Go Dark Property or (B) with respect to more than one (1) Go Dark Property during any individual Lease Year.

7.5 Signs. The size, color, design, location and specifications of all exterior signs, whether ground-mounted, pylon, window-, door- or building-mounted or otherwise, to be located on or in any Demised Premises or any other portion of any applicable Property, shall (a) comply with all applicable Property Requirements and (b) require Landlord' s prior written consent, not to be unreasonably withheld, conditioned or delayed, if and solely to the extent that any such sign (i) affects the structural integrity of any applicable Leased Improvements or (ii) materially and adversely impairs the then-existing visibility of such Demised Premises or Property (it being understood that, except as expressly set forth in this Section 7.5, signs shall not be subject to any approval by Landlord).

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ARTICLE VIII
ALTERATIONS

8.1 Alterations and Additions.

(a) Tenant shall not make (or cause to be made) (i) any alterations, renovations, modifications, additions (including, without limitation, the construction of any additional buildings), improvements, restorations, replacements or removals, excluding (for the avoidance of doubt) ordinary maintenance and repairs made, constructed or performed in accordance with the terms of this Lease (collectively, "**Alterations**") of or to any Demised Premises that affect the structural integrity of the Leased Improvements thereof ("**Structural Alterations**") or (ii) any Alterations that are not Structural Alterations ("**Non-Structural Alterations**") of or to any Demised Premises, the aggregate cost of which Non-Structural Alterations at such Demised Premises exceeds an amount equal to the greatest of (A) Three Hundred Thousand Dollars ($300,000) in any Lease Year, (B) four (4) months of the then current Base Rent Allocation Amount attributable to such Demised Premises and (C) (1) five percent (5%) of the Reference Property Value of the applicable Property in any Lease Year (the "**5% Threshold**"), if Tenant does not make a 10% Threshold Election, or (2) ten percent (10%) of such Reference Property Value in any two (2) Lease Year period (the "**10% Threshold**"), if Tenant makes a 10% Threshold Election (the greatest of (A), (B) and (C), the "**Alterations Threshold**"), in each case without the prior written consent of Landlord (which shall be subject to the applicable approval standard set forth in this Section 8.1(a)). In the event that the aggregate cost of the Non-Structural Alterations with respect to any applicable Demised Premises in any Lease Year exceeds the 5% Threshold ("**Excess Non-Structural Alterations**"), Tenant may, upon Notice to Landlord (which Notice shall describe in reasonable detail the applicable Alterations and the estimated cost thereof), make (or cause to be made) such Excess Non-Structural Alterations without Landlord' s consent (a "**10% Threshold Election**"), so long as the aggregate cost of (1) such Non-Structural Alterations and (2) all Non-Structural Alterations made or to be made during either the immediately preceding or the immediately succeeding Lease Year shall, in each case, not exceed the 10% Threshold (it being understood that any Non-Structural Alterations costing in excess of such 10% Threshold in any consecutive period of two (2) years shall require Landlord' s prior written consent (which shall be subject to the applicable approval standard set forth in the immediately succeeding sentence)). Landlord shall grant or withhold its consent (subject to the Deemed Approval Procedure) to any such Alterations (I) in its sole and absolute discretion with respect to any Structural Alterations and (II) in Landlord' s commercially reasonable judgment with respect to any Non-Structural Alterations that exceed the Alterations Threshold (it being agreed that Landlord' s consent shall not be required for Alterations that do not exceed the Alterations Threshold); provided, however, if Landlord has approved an Alteration (which approval shall be subject to the applicable approval standard set forth in this sentence) under the provisions of Section 8.3 relating to LO Capex Work, and provided that Tenant shall have provided all information and documentation required in connection with such Alteration under this Section 8.1(a), then no separate approval by Landlord shall be required with respect to such Alteration under this Section 8.1(a). Notwithstanding anything to the contrary herein, the provisions of this Section 8.1(a) shall (x) be subject to the provisions relating to Emergency Capex in Section 8.3(d), and (y) not apply to any Work constituting deferred maintenance that is to be

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completed within the first (1st) Lease Year, provided that, prior to commencing the same, Tenant provides Landlord with an Officer' s Certificate describing the Work that constitutes deferred maintenance and stating that the same is being performed pursuant to a property condition report or a similar recommendation from a third party reasonably satisfactory to Landlord (with such Officer' s Certificate being accompanied by a copy of such property condition report or third party recommendation (as applicable)).

(b) In connection with any request for Landlord' s consent to an Alteration under Section 8.1(a), Tenant shall deliver to Landlord an Officer' s Certificate pursuant to which Tenant shall certify either (i) the Tangible Net Worth of the Lease Guarantors, which Tangible Net Worth must equal or exceed the Reference Net Worth or (ii) as to the then aggregate amount of all outstanding and past due payables (excluding, for the avoidance of doubt, any payables that are the subject of a bona fide dispute conducted in accordance with any applicable provisions of Section 4.2) for all Alterations at all of the Properties (including Properties that become Severed Properties) and all of the Retail Properties (collectively, the "**Outstanding Alterations Payables**"), and if the amount of such Outstanding Alterations Payables exceeds Seven Million Five Hundred Thousand Dollars ($7,500,000) (the "**Outstanding Alterations Payables Threshold**") and Tenant has not delivered a certification pursuant to clause (i) above, then Landlord may, at Landlord' s election exercised in its sole discretion, require Tenant to deposit cash with a nationally recognized Title Company or another nationally recognized institutional third party depository selected by Landlord and reasonably approved by Tenant in an amount equal to the lesser of (A) 110% of the cost of the Alteration (as reasonably determined by Tenant and supported by any back-up documentation reasonably requested by Landlord, provided that in all events Tenant' s policies and practices for accruing amounts constituting Outstanding Alterations Payables shall be consistent with the policies and practices of the Tenant Parties with respect to their other accounts payable) that is the subject of such request for Landlord' s consent, and (B) the amount of Outstanding Alterations Payables that exceed the Outstanding Alterations Payables Threshold, which cash shall be disbursed to Tenant subject to conditions consistent with the Restoration Conditions, to the extent the same are applicable; provided, however, that (1) such cash shall be made available to Landlord for the completion of such Alteration in the event that Tenant fails to complete the same in accordance with the terms and conditions of this Lease and such failure continues beyond any applicable notice and cure periods, (2) in the event Tenant is completing such Alterations in accordance with the applicable terms and conditions of this Lease, such cash may be disbursed to Tenant periodically, pursuant to an escrow arrangement reasonably acceptable to the Parties, in the manner, and subject to similar conditions, as the Restoration Conditions, as applicable, and (3) following the completion of such Alteration by Tenant, any remaining deposited amount shall be returned to Tenant in accordance with the terms and conditions of this Lease so long as no Event of Default then exists. Alternatively, Tenant may elect to deposit cash with Landlord (or, at Tenant' s option, to deliver to Landlord an irrevocable standby letter of credit in form and substance reasonably acceptable to Landlord and issued by a Qualified Financial Institution or other financial institution reasonably acceptable to Landlord), in each case in an amount equal to the lesser of (I) 110% of the cost of the Alteration (as reasonably determined by Tenant, subject to the foregoing provisions with respect to such estimate) that is the subject of such request for Landlord' s consent and (I) the amount of Outstanding Alterations Payables that exceed the Outstanding Alterations Payables Threshold,

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which cash or letter of credit (AA) may be drawn by Landlord for the completion of such Alteration in the event Tenant fails to complete the same in accordance with the applicable terms and conditions of this Lease and such failure continues beyond any applicable notice and cure periods, (BB) in the event Tenant is completing such Alterations in accordance with the applicable terms and conditions of this Lease, Landlord shall, to the extent such letter of credit permits partial draws, permit amounts to be disbursed to Tenant periodically, pursuant to an escrow arrangement reasonably acceptable to the Parties, in the manner, and subject to similar conditions, as the Restoration Conditions, as applicable, and (CC) shall be returned to Tenant upon the completion of such Alteration in accordance with such terms and conditions so long as no Event of Default then exists.

(c) Tenant shall make all Alterations that are, and perform all other Work that is, required to cause any Property or Demised Premises to comply with applicable Property Requirements and the Permitted Use, including the repair, maintenance and, if necessary, periodic replacement of (t) HVAC equipment, (u) bathrooms, (v) parking surfaces, (w) roof and structure, (x) signage, (y) floors and (z) other customary Capital Expenditures (collectively, "**Required Work**"); provided, however, that no Structural Alterations shall be required in the final two (2) Lease Years of the Initial Term (unless Tenant has exercised a Renewal Option) or (if applicable) the final Lease Year of any Renewal Term unless the failure to perform such Alterations would violate any applicable Property Requirements. Notwithstanding anything to the contrary herein, any restoration that is made in connection with a Casualty or Condemnation shall not be governed by this Section 8.1 but shall be governed by the provisions of Article XII.

(d) If Tenant makes any Alterations pursuant to this Article VIII or as required by Articles X or XII, in each case, with respect to any Demised Premises (such Alterations and all work relating thereto, collectively, the "**Work**"), then: (i) such Work (when completed) shall not lessen the market value of such Demised Premises in any material respect; (ii) Tenant shall perform such Work (or cause such Work to be performed) in a good and workmanlike manner, and Tenant shall complete such Work (or cause such Work to be completed) expeditiously in compliance in all material respects with all applicable Property Requirements and the Construction Standards; (iii) if any such Work involves the replacement of any Fixtures or parts thereto, all replacement Fixtures or parts (as applicable) shall have a Useful Life at least equal to the remaining Useful Life of the Fixtures being replaced immediately prior to, if applicable, the occurrence of the event that necessitated such replacement (assuming such replaced Fixtures were then in the condition required under this Lease); (iv) subject to Tenant' s right to contest under Section 4.2, Tenant shall promptly, after written notice of the filing thereof, discharge and remove (or cause to be discharged and removed) (whether by payment, bonding or otherwise) all liens filed against such Demised Premises arising out of such Work in accordance with Section 20.17; (v) Tenant shall procure and pay for all permits and licenses required in connection with any such Work; and (vi) subject to the provisions of Section 8.2 below and except for any Alterations that Tenant is entitled to or required hereunder to remove (and which, in each such case, Tenant does remove) during or at the end of the Term, the Alterations resulting from such Work shall be the property of Landlord and shall be subject to this Lease and Tenant shall execute and deliver to Landlord any instrument or document reasonably requested by Landlord evidencing the assignment to Landlord of all estate, right, title and interest (other than the leasehold estate created hereby) of Tenant or any other Person thereto or therein.

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8.2 Title to Alterations. Landlord shall have the right to require Tenant to remove, upon the Expiration Date or any earlier Property Termination Date, any Alterations (other than any Alterations that were required to be made by Tenant (and which Tenant did make) during the Term pursuant to any applicable Legal Requirements) if (a) such Alterations are not customary (e.g., of an extraordinary or unusual character) for Tenant' s then current use of the applicable Demised Premises in accordance with this Lease (unless Landlord otherwise agrees in writing that the removal of any such Alterations would not be required), or (b) from after the date on which Tenant changes the use of any Demised Premises to a use that is substantially different from its use as of the Commencement Date, if Landlord conditioned its approval (to the extent such approval is otherwise required under this Lease) of such Alterations upon Tenant' s removal thereof from the such Demised Premises at the end of the Term (collectively, "**Required Removal Alterations**"). Nothing in this Section 8.2 shall limit (i) any of Tenant' s obligations under this Lease, including, without limitation, with respect to the repair of any damage resulting from any removal of Alterations or, if otherwise required pursuant to the terms of this Lease, to indemnify, protect and hold harmless the Landlord Indemnified Parties from and against any Costs and Expenses incurred by any of them in connection with such removal and/or repair, or (ii) Tenant' s right in accordance with (and subject to) the terms of this Lease to remove any Alterations upon the Expiration Date or on or after any earlier Property Termination Date.

8.3 Capital Expenditures at Landlord Option Properties.

(a) Within ninety (90) days prior to the first (1st) day of January of each calendar year during the Term commencing on January 1, 2022, Tenant shall submit to Landlord (for its information only and not for its approval) an annual capital plan for each Demised Premises, which shall set forth all proposed or planned (as of such date of delivery) capital expenditures with respect to each Demised Premises for such calendar year (an "**Annual Capex Plan**" and, together with any LO Capex Plan, each, a "**Required Capex Plan**"). Landlord agrees, for the avoidance of doubt, that no Annual Capex Plan shall be required for the remainder of the 2020 calendar year and acknowledges that Tenant has submitted to Landlord the Annual Capex Plan for the 2021 calendar year.

(b) Not less than sixty (60) days prior to making any Capital Expenditures with respect to any Landlord Option Property (such Capital Expenditures, "**LO Capex Work**"), except to the extent such LO Capex Work constitutes Required LO Capex Work (as to which Section 8.3(c) shall apply), if such LO Capex Work shall occur (i) from and after Landlord' s exercise of a Landlord Option with respect to a Landlord Option Property (an "**LO Capex Approval Period**") or (ii) prior to the commencement of such LO Capex Approval Period and the cost of such LO Capex Work on a per project basis shall exceed Two Hundred Fifty Thousand Dollars ($250,000) (such LO Capex Work, "**Material Discretionary LO Capex Work**"), Tenant shall submit to Landlord for its approval (which shall be granted or withheld in accordance with Section 8.3(d)) an LO Capex Plan with respect to such Material Discretionary LO Capex Work. As used herein, "**LO Capex Plan**" means, with respect to any LO Capex Work, a capital plan that sets forth (A) a reasonably detailed description of the nature and scope of such LO Capex

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Work, (B) Tenant' s reasonable estimate (together with any supporting documentation reasonably requested by Landlord, to the extent available) of the cost of such LO Capex Work in the aggregate, (C) the planned commencement date and anticipated completion date for such LO Capex Work and (D) Tenant' s reasonable determination (together with any supporting documentation reasonably requested by Landlord) of the amortization period of such LO Capex Work, which shall be the lesser of (I) twenty (20) years and (II) the Useful Life of such LO Capex Work (as applicable, the "**Amortization Period**").

(c) Not less than sixty (60) days prior to commencing any LO Capex Work that constitutes Required Work ("**Required LO Capex Work**"), if such Required LO Capex Work shall occur (i) prior to the commencement of the LO Capex Approval Period with respect to the applicable Landlord Option Property and the cost of such Required LO Capex Work on a per project basis shall exceed Two Hundred Thousand Dollars ($200,000) or (ii) during such LO Capex Approval Period and the cost of such Required LO Capex Work on a per project basis shall exceed Twenty-Five Thousand Dollars ($25,000) (such Required LO Capex Work, "**Material Required LO Capex Work**", and together with Material Discretionary LO Capex Work, collectively, "**Material LO Capex Work**"), then Tenant shall submit to Landlord for its approval (which shall be granted or withheld in accordance with Section 8.3(d)) an LO Capex Plan with respect to such Material Required LO Capex Work.

(d) Landlord' s approval with respect to any LO Capex Plan shall be granted or withheld (i) in Landlord' s commercially reasonable judgment if the applicable LO Capex Work shall occur prior to Landlord' s exercise of the applicable Landlord Option, (ii) in Landlord' s sole and absolute discretion if such LO Capex Work shall occur following Landlord' s exercise of such Landlord Option and (iii) within forty-five (45) days after Tenant' s delivery of such LO Capex Plan to Landlord. Notwithstanding the foregoing or anything herein to the contrary, if any such LO Capex Work or other Work is required to prevent imminent harm to persons or property or to otherwise address an emergency (as determined by Tenant in its reasonable discretion) at the applicable Property ("**Emergency Capex**"), then Tenant may submit its request for Landlord' s approval in a Notice (an "**Emergency Capex Notice**") contained in an envelope marked "PRIORITY" and containing the following bold-faced, conspicuous (i.e., in a font size that is not less than fourteen (14) point) legend at the top of the first page thereof: "**THIS IS A REQUEST UNDER THAT CERTAIN DISTRIBUTION CENTER MASTER LEASE AMONG J. C. PENNEY PROPERTIES, LLC, J. C. PENNEY CORPORATION, INC. AND PENNEY TENANT II LLC. FAILURE TO RESPOND TO THIS REQUEST WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED**". In the event that Tenant submits any such Emergency Capex Notice to Landlord in accordance with the foregoing, then Landlord shall grant or withhold such approval within five (5) Business Days after such Emergency Capex Notice is given, and if Landlord fails to grant or withhold such approval within such five (5) Business Day period, then Landlord' s approval shall be deemed to have been granted with respect to such Emergency Capex. If it is not reasonably practicable under the circumstances for Tenant to deliver any information or documentation relating to any such Emergency Capex that would otherwise be required to be included in an LO Capex Plan, then Tenant shall not be required to deliver the same to Landlord, provided that Tenant shall deliver any such information or documentation within thirty (30) days after completing such Emergency

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Capex. Nothing in this Section 8.3 shall prohibit (or give Landlord the right to approve) the continuation (in accordance with the applicable LO Capex Plan), during the Term of any Material LO Capex Work that Tenant commenced (or caused to be commenced) prior to the commencement of the applicable LO Capex Approval Period.

(e) Upon the Property Termination Date with respect to any Landlord Option Property, the cost of (i) all or any portion of any Material LO Capex Work approved by Landlord and (ii) all or any portion of any LO Capex Work (other than Material LO Capex Work), that, in each case, Tenant has completed in all material respects in accordance with the terms of this Lease and (in the case of any such Material LO Capex Work) the approved LO Capex Plan therefor (collectively, "**Apportioned LO Capex Costs**"), shall be apportioned between Landlord and Tenant, with Landlord' s share ("**Landlord' s Share**") thereof equal to the total amount of the Apportioned LO Capex Costs, multiplied by a fraction, the numerator of which shall be the then-remaining portion of the Amortization Period with respect to such LO Capex Work (prorated in the case of any partial years) and the denominator of which shall be the full Amortization Period. Notwithstanding anything to the contrary herein, in the event that Landlord disapproves all or any portion of any LO Capex Work pursuant to the applicable LO Capex Plan, Tenant shall still have the right to undertake such disapproved LO Capex Work (or the disapproved portion thereof) provided that (A) such LO Capex Work otherwise complies with the provisions of this Lease and (B) Tenant obtains Landlord' s consent thereto (if and to the extent such consent is required pursuant to Section 8.1); provided, however, that the cost of such LO Capex Work or the applicable portion thereof that was disapproved by Landlord, as applicable, shall not be reimbursable to Tenant.

ARTICLE IX
TRANSFER

9.1 Transfer; Subletting and Assignment. Except as otherwise expressly provided in this Article IX, Tenant shall not, directly or indirectly, effect, suffer or permit (a) any Transfer with respect to Tenant' s interest in this Lease or the Demised Premises or (b) any Corporate Transaction with respect to Tenant or any Lease Guarantor without, in each case, Landlord' s prior written consent, which consent (i) to the extent that any such Transfer consists of a sublease (other than a Permitted Sublease), shall not be unreasonably withheld, conditioned or delayed, and (ii) with respect to any such Corporate Transaction or other Transfer (except to the extent that such Corporate Transaction or Transfer is otherwise expressly permitted under this Lease) may be granted or withheld in Landlord' s sole and absolute discretion. Notwithstanding anything to the contrary herein, in no event shall the following Transfers require Landlord' s consent or be subject to the provisions of this Article IX:

(A) any Transfer of Equity Interests, Merger or Division if (I) such transaction does not involve Tenant, any Lease Guarantor or any other Required Subsidiary, (II) such transaction does not result in a Change of Control, directly or indirectly, of any Tenant Party, and (III) either (x) such transaction does not result in a reduction of the Tangible Net Worth of the Lease Guarantors or (y) the Lease Guarantors will have a Tangible Net Worth, immediately following such transaction, that is equal to or greater than the Reference Net Worth; provided, however, that (aa) if such transaction involves the Transfer of direct or indirect Equity Interests in Tenant of

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twenty percent (20%) or less and such Transfer does not result in a Change of Control, directly or indirectly, of any Tenant Party, then Landlord' s consent to such transaction shall not be required and Tenant shall not be required to deliver to Landlord any Notice of such transaction and (bb) if such transaction involves the Transfer of direct or indirect Equity Interests in Tenant of more than twenty percent (20%), then not more than thirty (30) days after such transaction Tenant shall deliver to Landlord a certification of the percentage interest transferred and that (AA) the Tangible Net Worth of the Lease Guarantors immediately following such transaction is equal to or greater than the Reference Net Worth or (BB) such Transfer of direct or indirect Equity Interests in Tenant did not result in a reduction in the Tangible Net Worth of the Lease Guarantors;

(B) any initial public offering of Equity Interests pursuant to an effective registration statement or any Transfer of Equity Interests in a public company whose Equity Interests are (or will be, following such initial public offering) traded on a nationally or internationally recognized exchange or nationally or internationally recognized over the counter market;

(C) any Corporate Transaction as to which Simon (and/or any of its Affiliates) and/or Brookfield (and/or any of its Affiliates) is the Transferee;

(D) any Transfer of direct or indirect Equity Interests in, or a Corporate Transaction at or above the level of, Simon Property Group, L.P. (or any of its successors);

(E) any Transfer of direct or indirect Equity Interests in, or a Corporate Transaction at or above the level of, Brookfield (or any of its successors); or

(F) any Corporate Transaction which results in a Change of Control of any or all of the Tenant Parties so long as, upon the consummation of such Corporate Transaction, the Lease Guarantors shall have a Tangible Net Worth that is equal to or greater than the Reference Net Worth.

Any assignment, subletting, Corporate Transaction or other Transfer in violation of this Article IX shall be void *ab initio* and of no force or effect. Tenant acknowledges and agrees that the restrictions on Transfers set forth in this Article IX are reasonable, have been specifically negotiated and bargained for between the Parties and are a material inducement to Landlord entering into this Lease without which Landlord would not enter into this Lease.

9.2 Permitted Subletting.

(a) Notwithstanding anything to the contrary in this Article IX, the following shall not require the consent of Landlord: (i) subleases of space in the Demised Premises to (A) any Affiliate of Tenant so long as such subleases are not designed to circumvent the provisions of this Article IX or Landlord' s consent or approval rights hereunder (collectively, "**Affiliate Subleases**"), or (B) any other Person (collectively, "**Third Party Subleases**"), provided that the premises demised under any such Third Party Subleases do not in the aggregate comprise more than twenty-five percent (25%) of the Gross Leasable Square Footage of the Properties subject to this Lease as of the Commencement Date (i.e., such twenty-five percent (25%) limit is not calculated on a Property-by-Property basis) (collectively, "**No-Consent Subleases**"; such 25%

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limit under this Section 9.2(a)(ii), as the same may be adjusted pursuant to the provisions of Section 1.9, the "**No-Consent Sublease Basket**"; and Affiliate Subleases and No-Consent Subleases, collectively, "**Permitted Subleases**").

(b) With respect to any sublease: (i) if Landlord' s consent is required or otherwise being requested, not less than fifteen (15) Business Days prior to entering into such proposed sublease, Tenant shall provide Landlord advance written Notice of such proposed sublease, which Notice shall include a description of the portion(s) of the Demised Premises that will be demised by such sublease, the proposed subtenant, and a copy of such proposed sublease; (ii) if such sublease is a Permitted Sublease and Landlord' s consent is not required or otherwise being requested, not less than five (5) Business Days prior to entering into such proposed sublease, Tenant shall provide Landlord advance written Notice of such proposed sublease, which Notice shall specify whether such proposed sublease is an Affiliate Sublease and include a description of the portion(s) of the Demised Premises that will be demised by such sublease, the proposed subtenant, and, upon Landlord' s request, a copy of such proposed sublease; (iii) any such sublease shall not extend beyond the then current Term minus one (1) day and shall further comply with the applicable terms and conditions set forth in Section 9.4; and (iv) if such sublease is not an Affiliate Sublease and Tenant has not specified in its Notice to Landlord that Tenant is electing to treat such sublease as a No-Consent Sublease (in which case Tenant shall be deemed to have elected to be seeking Landlord' s consent thereto), and Landlord reasonably withholds its consent thereto, then (A) for any such subleases demising up to an aggregate of one hundred thousand (100,000) Gross Leasable Square Feet ("**Permitted Second Chance Subleases**"), Tenant may elect in its discretion to immediately treat such Permitted Second Chance Subleases as No-Consent Subleases and (B) for any such subleases that are not Permitted Second Chance Subleases (i.e., after the one hundred thousand (100,000) Gross Leasable Square Foot limitation has been met) Tenant may not (without prejudicing Tenant' s right to re-submit such sublease for approval if the reason for Landlord' s denial of consent has, in Landlord' s reasonable judgment, been rectified) treat any such proposed sublease (or any other sublease for the applicable Demised Premises, with the same proposed subtenant or any of its Affiliates) as a No-Consent Sublease for a period of ninety (90) days from and after Tenant' s delivery of its initial Notice to Landlord (the "**Second Chance Sublease Waiting Period**"). Within forty-five (45) days following the end of each fiscal quarter during the Term, Tenant shall, whether or not Landlord' s consent is required, provide Landlord (1) Notice (excluding, for this purpose, Notice to Landlord' s legal counsel) of all then-existing Permitted Subleases and the portions of the Demised Premises relating thereto (collectively, the "**Permitted Sublease Reports**") and (2) a copy of each executed sublease during such fiscal quarter.

(c) Tenant hereby represents and warrants to Landlord that (i) effective as of the Commencement Date, Tenant has entered into an Affiliate Sublease for the subleasing of the entirety of the Demised Premises to Penney OpCo LLC, a Virginia limited liability company (the "**Master Subtenant**" and such Affiliate Sublease, the "**Master Affiliate Sublease**"), and (ii) Tenant has delivered to Landlord a true and correct copy of the executed Master Affiliate Sublease as of the Commencement Date. Without limiting anything in Section 9.4, Tenant acknowledges, covenants and agrees that, with respect to the Master Affiliate Sublease, or if applicable, any other Affiliate Sublease (collectively, together with any amendment, modification, supplement,

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restatement or replacement thereof in accordance with this Section 9.2(c), "**Applicable Subleases**"): (A) such Applicable Subleases and the terms and provisions thereof shall be fully and automatically subject and subordinate to this Lease and the terms and provisions hereof such that, among other things, (I) all terms and conditions of this Lease regarding the use and occupancy of the Demised Premises and the subletting of any portion thereof shall be applicable to such Applicable Sublease, and (II) upon any termination of this Lease either in whole or with respect to the portion thereof covered by such Applicable Sublease (except to the extent otherwise expressly provided in Section 1.9 with respect to any Lease severance), such Applicable Sublease shall automatically terminate and be of no further force and effect; (B) Intentionally Omitted, (C) Tenant shall (and shall cause Master Subtenant and each applicable subtenant under an Affiliate Sublease to) from time to time, promptly following Landlord' s and/or any applicable Landlord Lender' s written request, execute and deliver to Landlord or such Landlord Lender, as applicable, subordination agreements in form and substance reasonably satisfactory to Landlord or such Landlord Lender, as applicable, providing for the subordination of such Applicable Subleases to any applicable Landlord Financing Documents (provided, however, that any such subordination agreement shall provide for the non-disturbance of the subtenant under such Applicable Sublease if (and on the same terms that) any applicable SNDA provides for the non-disturbance of Tenant hereunder); (D) in connection with any Applicable Sublease (or any amendment, restatement or replacement thereof), Tenant shall provide a copy of the Applicable Sublease to Landlord prior to execution thereof so that Landlord can confirm its compliance with the foregoing subordination provisions of this Section 9.2(c), and Tenant shall pay its own costs and expenses relating thereto and shall promptly reimburse Landlord for any Costs and Expenses Landlord incurs in reviewing such Applicable Sublease to confirm its compliance with the foregoing subordination provisions of this Section 9.2(c); (E) Landlord may deal directly with the Master Subtenant or its successor under any replacement Master Affiliate Sublease with respect to any request for consent or other matter under this Lease as if such subtenant were Tenant hereunder (and Tenant hereby authorizes Landlord to so deal directly with Master Subtenant); and (F) any sub-sublease (or any further subletting, directly or indirectly) of all or any portion of the premises demised by any Applicable Sublease or any assignment thereof to any Person that is not an Affiliate of Tenant shall require the consent of Landlord to the same extent as would be required with respect to any other sublease of the Demised Premises or assignment of this Lease by Tenant. Subject to the provisions of this Section 9.2(c), Landlord hereby acknowledges and agrees that the Master Affiliate Sublease is an Affiliate Sublease that is permitted under this Lease and, for so long as the Master Affiliate Sublease remains in full force and effect, (I) Landlord shall accept Notices (and Tenant hereby authorizes Landlord to so accept such Notices) from the Master Subtenant as if such Notices were received from Tenant and (II) the Master Subtenant shall have the right to exercise or perform (and Tenant hereby authorizes Landlord to accept such exercise and performance of) all rights and obligations of Tenant under this Lease upon and subject to all of the terms and conditions of this Lease, with the same force and effect as if such rights and obligations were exercised and performed by Tenant.

9.3 Permitted Assignments and Corporate Transactions.

(a) Notwithstanding anything to the contrary in this Article IX, Landlord' s consent shall not be required in connection with (but Tenant shall give Landlord not less than

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thirty (30) days' Notice of) a Corporate Transaction with respect to any Tenant or any Lease Guarantor so long as the applicable Transferee is, as of the closing of such Corporate Transaction, (A) an Affiliate of Tenant or any Lease Guarantor or (B) any other Person that (together with any Transfer Replacement Guarantors and any Continuing Guarantors) (i) has a Tangible Net Worth of not less than Five Hundred Million Dollars ($500,000,000) (the "**Reference Net Worth**") and (ii) provides, or causes one or more of its Affiliates that has a Tangible Net Worth at least equal to the Reference Net Worth (such Affiliates, "**Transfer Replacement Guarantors**") to provide, as of such closing, a Replacement Guaranty; provided, however, that if the Tangible Net Worth of any existing Lease Guarantors that will continue as Lease Guarantors following such Corporate Transaction ("**Continuing Guarantors**") equals or exceeds the Reference Net Worth as of the closing of such Corporate Transaction, then such Transferee shall have no obligation hereunder to deliver, or cause any of its Affiliates to deliver, any such Replacement Guaranty.

(b) Notwithstanding anything to the contrary in this Article IX, Landlord' s consent shall not be required in connection with any assignment of Tenant' s interest in this Lease (i) to the applicable Transferee or to a newly formed limited liability company that is wholly owned, directly or indirectly, by such Transferee upon the closing of any Corporate Transaction that is permitted under Section 9.3(a), or (ii) to any Affiliate of Tenant in connection with a bona fide transaction so long as such assignment is not designed to circumvent Landlord' s consent or approval rights hereunder (in each case of (i) and (ii), a "**Successor Tenant**"); provided, however, that, not less than thirty (30) days prior to entering into any proposed assignment, Tenant shall provide Landlord advance written Notice of such proposed assignment, which Notice shall include a description of the proposed assignee and a draft, to the extent then available, of any instrument of assignment proposed to be entered into by Tenant and such assignee. Within ten (10) Business Days after the effective date of any such assignment, Tenant or the applicable Successor Tenant shall deliver a fully executed copy thereof to Landlord. Tenant shall be released from all obligations and liabilities under this Lease that accrue from and after the date of any such assignment (excluding all Surviving Obligations), provided that the Successor Tenant assumes all obligations of Tenant accruing from and after the date of such assignment pursuant to documentation that is reasonably satisfactory to Landlord.

9.4 Required Subletting Provisions. Any sublease entered into after the Commencement Date shall expressly provide:

(a) that it shall be subject and subordinate to all of the terms and conditions of this Lease, including any Landlord Financing Documents to which this Lease may from time to time be subject and subordinate (taking into account any applicable non-disturbance or recognition provisions expressly set forth in any applicable Landlord Financing Documents or SNDA);

(b) that the use of the applicable Demised Premises (or the applicable portion thereof) shall not conflict with any applicable Property Requirements or any other terms of this Lease; and

(c) subject to the terms of any Subtenant SNDA that Landlord may enter into with the applicable subtenant in accordance with (and subject to) Section 9.5, (A) if the Lease

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shall expire or otherwise terminate for any reason with respect to such applicable Demised Premises before the expiration of such sublease, such sublease shall automatically terminate without further notice or action of any kind and the subtenant under such sublease shall immediately surrender possession of the subleased premises to Landlord or as directed by Landlord in accordance with the terms of this Lease, and (B) if such subtenant receives a written notice from Landlord stating that this Lease has been terminated with respect to the applicable Demised Premises, such subtenant shall thereafter attorn to Landlord, whereupon such sublease shall continue as a direct lease between such subtenant and Landlord upon all of the terms and conditions of such sublease.

9.5 **Subtenant SNDA**. If requested by Tenant pursuant to a Notice delivered to Landlord, provided that no Event of Default then exists, Landlord shall enter into a subordination, non-disturbance and attornment agreement with any subtenant that is not an Affiliate of Tenant (a "**Subtenant SNDA**") if (a) such subtenant occupies or will occupy, pursuant to its sublease, Gross Leasable Square Footage of 250,000 or more and (b) Tenant has provided Landlord a copy of the applicable sublease. Any such Subtenant SNDA shall be in substantially the form and substance of Exhibit F attached hereto or otherwise in form and substance reasonably satisfactory to Landlord and the applicable subtenant. Tenant shall pay Landlord for its Costs and Expenses incurred in connection with the negotiation of any Subtenant SNDA, whether or not the same is executed, up to a maximum of Ten Thousand and No/100 Dollars ($10,000.00) per Subtenant SNDA.

9.6 **No Release of Tenant' s Obligations**. Neither any assignment of this Lease nor any sublease shall relieve Tenant of its obligation to pay the Rent and to perform all of its other obligations hereunder, except as expressly provided herein to the contrary. The liability of Tenant and any immediate and remote successor in interest of Tenant (by assignment or otherwise), and the due performance of the obligations of this Lease on Tenant' s part to be performed or observed, shall not in any way be discharged, excused, released or impaired by any (a) stipulation which extends the time within which an obligation under this Lease is to be performed, (b) waiver of the performance of an obligation required under this Lease that is not entered into for the benefit of Tenant or such successor, or (c) failure to enforce any of the obligations set forth in this Lease. For the avoidance of doubt, the Landlord Option and all obligations of Tenant with respect to any Landlord Option Property, and all obligations of Tenant in connection with the exercise of any Renewal Option, shall in each case continue to apply to Tenant with full force and effect and Tenant shall be fully liable with respect thereto.

9.7 **No Leasehold Mortgages; Acceptable Credit Facilities**. Tenant shall not have any right to mortgage, pledge or otherwise encumber its interest under this Lease or any sublease, and any such mortgage, pledge or encumbrance shall be void and of no force and effect. Notwithstanding anything to the contrary in this Lease, Tenant shall be permitted to collaterally assign Tenant' s right, title and interest in and to this Lease as part of any grant of a security interest in all or substantially all of Tenant' s assets in connection with an Acceptable Credit Facility. On the Commencement Date, Landlord is entering into a collateral access agreement in favor of the current Acceptable Credit Facility Lender in the form of Exhibit I attached hereto (the "**Pre-Approved Access Agreement Form**"). From time to time during the Term, promptly following Tenant' s written request, so long as no Event of Default exists and at Tenant' s sole cost and expense, Landlord shall execute and deliver a collateral access agreement in favor of any other

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Acceptable Credit Facility Lender on the Pre-Approved Access Agreement Form or on such other form as may be reasonably acceptable to Landlord and such Acceptable Credit Facility Lender. Supplementing the foregoing, and as a condition precedent to the effectiveness of any Severed Lease pursuant to Section 1.9, (a) any such collateral access agreement then in effect with respect to the Severed Property or Severed Properties that will become subject to such Severed Lease shall be assigned to and assumed by the applicable Severed Landlord or (b) such Severed Landlord shall execute and deliver, on or prior to the applicable Lease Severance Date, to each applicable Acceptable Credit Facility Lender a new collateral access agreement substantially on the Pre-Approved Access Agreement Form or on such other form as may be reasonably acceptable to such Severed Landlord and Acceptable Credit Facility Lender.

9.8 **Structure Chart**. Landlord acknowledges that it received from Tenant a copy of Tenant' s Structure Chart prior to the Commencement Date. Tenant represents and warrants to Landlord that the Structure Chart attached hereto as **Exhibit G** is a true, complete and correct copy of the organizational structure of Tenant and the Lease Guarantors as of the Commencement Date. Without limiting anything in this Article IX, within fifteen (15) days following (a) any material modification to the Structure Chart (including, for the avoidance of doubt, any modification that (i) relates to any Corporate Transaction that is subject to the requirements set forth in Section 9.1 or (ii) reflects a change to the organizational structure of any Tenant Party (including, without limitation, the creation of a new Subsidiary thereof (other than a new Subsidiary of OPCO IP SPE or OPCO RE SPE) which shall then be required to become a Lease Guarantor)) or (b) Landlord' s written request (which shall not, so long as no Event of Default exists, be given more than two (2) times in any Lease Year), Tenant shall promptly deliver to Landlord a copy of its then current Structure Chart, together with an Officer' s Certificate certifying that such updated Structure Chart is true, complete and correct as of the applicable date. If there are any material modifications to the Structure Chart, the updated Structure Chart delivered by Tenant in such Officer' s Certificate shall automatically replace the outdated Structure Chart, provided that (A) nothing in this Section 9.8 shall be construed to limit any of the restrictions on Transfer set forth in this Article IX and (B) no such modifications to the Structure Chart shall be deemed to constitute Landlord' s written consent to any modifications that require Landlord' s prior written consent pursuant to an express provision of this Lease.

9.9 **Atlanta and Haslet Subletting**. Supplementing the provisions of Section 9.1 through Section 9.3, Tenant shall have the right, in its sole discretion, without the consent of Landlord and without any reduction of the No-Consent Sublease Basket under this Lease or any Severed Lease as a result thereof (each a "**Sublease Option**"), to sublease all or any portion of the Atlanta Sublease Space and/or the Haslet Sublease Space (individually and/or collectively, as the context may require, the "**Sublease Space**") at any time during the Term and, if Tenant desires to exercise any such Sublease Option, Tenant shall deliver to Landlord Notice thereof (a "**Sublease Option Notice**"), which Sublease Option Notice shall (x) once delivered, be irrevocable, (y) specify which Sublease Space is the subject of such Sublease Option Notice (which can be all or any portion of the Atlanta Sublease Space or all or any portion of the Haslet Sublease Space or both simultaneously) (such space subject to the applicable Sublease Option, the "**Optioned Sublease Space**"), and (z) propose the broker Tenant would select to sublease the Optioned Sublease Space, which broker shall be a Pre-Approved Broker or such other broker as Tenant may

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propose in the Sublease Option Notice (the "**Sublease Broker**"). Tenant' s exercise of the Sublease Option shall be subject to the following terms and conditions, which shall apply to the Optioned Sublease Space from the date Tenant delivers the Sublease Option Notice until the end of the Term:

(a) If the Sublease Broker proposed by Tenant in the Sublease Option Notice is a Pre-Approved Broker, then such broker shall not be subject to the approval of Landlord and shall be the Sublease Broker. If the Sublease Broker proposed by Tenant is not a Pre-Approved Broker, then such broker shall be subject to the reasonable approval of Landlord, which approval Landlord shall grant or withhold within five (5) Business Days following delivery of the Sublease Option Notice. If Landlord approves or fails to timely withhold its approval, then the broker proposed by Tenant shall be the Sublease Broker. If Landlord timely and reasonably withholds its approval, then the Parties shall confer and, working expeditiously and in good faith, shall agree upon a mutually-acceptable Sublease Broker within the next ten (10) Business Days; provided, however, Tenant shall always have the option to use a Pre-Approved Broker, in which event Landlord shall not have any approval right over such Sublease Broker. If the Parties are unable to agree upon a Sublease Broker and Tenant has proposed a Broker that is not a Pre-Approved Broker, each Party shall select one broker and the Sublease Broker shall be selected randomly (i.e., by coin flip). Any change to the Sublease Broker, once selected, shall be subject to the same selection process as provided above.

(b) Once the Sublease Broker has been selected, Tenant shall promptly (and in any event within fifteen (15) Business Days of such selection) engage the Sublease Broker and, once engaged, Tenant shall, and (if applicable) shall direct the Sublease Broker to: (i) market the Optioned Sublease Space for sublease and use commercially diligent efforts to cause the Sublease Broker to procure one or more subtenants to sublease all or as much of the Optioned Sublease Space as is commercially practical for all or so much of the then remaining Term as is commercially practical, in all cases, on terms that seek to maximize the sublease revenue for the Optioned Sublease Space, taking into consideration the sublease market, the Optioned Sublease Space, terms and conditions that may impose additional material obligations on Tenant attributable to the subleasing of the Optioned Sublease Space or result in other material adverse effects on Tenant and/or the operational utility (or Tenant' s use) of the remainder of the Atlanta Property or Haslet Property (as applicable) and all other relevant factors (it being agreed that this clause (i) shall not be interpreted as an assurance or guarantee by Tenant as to any particular sublease rent or revenue); (ii) provide Landlord with copies of the marketing teaser and other marketing materials prepared by the Sublease Broker and, promptly after being received, any bona fide written offers or written term sheets from or to prospective subtenants; (iii) keep Landlord reasonably apprised of the status of any ongoing negotiations with prospective subtenants; (iv) promptly respond to any reasonable written requests by Landlord for any status updates, including drafts of subleases; and (v) provide Landlord the right to communicate directly with the Sublease Broker and, if requested by Tenant, Tenant may participate in such communications, regarding the status of the subleasing efforts, prospects and the market (and each of Tenant and Landlord agrees to make its representatives available at mutually-convenient times so as to facilitate such communications). In addition, prior to the Optioned Sublease Space being marketed, the Parties shall work together collaboratively and in good faith to designate the

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precise delineation of the Optioned Sublease Space so as to ensure that it is reasonably comparable in operational utility and enjoyment to the remainder of the Demised Premises that Tenant will continue to occupy following the subleasing of the Optioned Sublease Space, which shall include providing any prospective subtenant with its equitable share of the use of loading docks, bays, platforms and parking and office space, and providing reasonable access to shared services, including service-ways, driveways, freight, escalators, mechanical rooms and bathrooms.

(c) From and after Tenant' s delivery of a Sublease Option Notice until the Optioned Sublease Space is subject to a Third Party Sublease, Tenant shall not retain a broker, sublease, market for sublease, or take any other actions, to competitively sublease all or any portions of the related Property that are not Optioned Sublease Space.

(d) In connection with any subleasing of Optioned Sublease Space: (i) the sublease shall not be an Affiliate Sublease; (ii) the proposed subtenant' s use of the Optioned Sublease Space shall be consistent with the Permitted Use set forth in this Lease and shall in no event be used for any Prohibited Use; and (iii) any free rent period granted to a subtenant shall be amortized against the Optioned Sublease Rent payable by such subtenant on a straight-line basis over the term of the applicable Third Party Sublease. Tenant shall provide Landlord with copies of the executed Third Party Sublease and all invoices and other reasonably-requested supporting documentation within ten (10) Business Days after Landlord' s written request therefor in order for Landlord to verify such Sublease Expenses and any Optioned Sublease Rent.

(e) Beginning on the date (such date, the "**Sublease Option Start Date**") that is twenty-four (24) months after the Sublease Option Notice is delivered and continuing at all times until the end of the Term, Tenant' s obligation to pay Base Rent on the Optioned Sublease Space (it being understood that the numbers below assume that the Optioned Sublease Space includes both the Atlanta Sublease Space and the Haslet Sublease Space, and shall be subject to Section 9.9(f) below) shall be replaced with the following base rent obligations (which shall be paid at the times set forth in, and in a manner consistent with, Section 3.1(a)) (the "**Replacement Base Rent**"):

(i) If, despite Tenant' s continued use of commercially diligent efforts to sublet the Optioned Sublease Space, no Third Party Sublease is in effect on the Sublease Option Start Date (and continuing for so long as no such Third Party Sublease is then in effect) for the Optioned Sublease Space, Tenant shall pay to Landlord, as Replacement Base Rent for the Optioned Sublease Space, an amount equal to (A) $1,500,000 per annum, as such amount shall be increased from time to time with each percentage increase in the Base Rent (and by the same percentage amount) (the "**Tenant' s Maximum Annual Sublease Base Rent Contribution**"), less (B) sixty-six percent (66%) of any Sublease Space Property Charges reasonably allocable to the Optioned Sublease Space during such period (it being agreed that, for the avoidance of doubt, Tenant shall continue to be obligated to pay all Sublease Space Property Charges allocable to the Optioned Sublease Space so that the net effect after reducing the amounts described in clause (B) above is that Tenant' s maximum financial obligation pursuant to this Section 9.9(e)(i) shall be equal to (1) Tenant' s Maximum Annual Sublease Base Rent Contribution plus (2) thirty four percent (34%) of all Sublease Space Property Charges allocable to the Optioned Sublease Space).

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(ii) If (1) a Third Party Sublease is in effect on the Sublease Option Start Date or at any time thereafter through the end of the Term (or any portion thereof) and (2) the base rent payable per annum under such Third Party Sublease (the "**Optioned Sublease Rent**") is, after deducting all Sublease Expenses (which shall always be paid first in connection with any Third Party Sublease) (the Optioned Sublease Rent, less such Sublease Expenses, the "**Net Optioned Sublease Rent**"), less than $4,400,000 per annum (as such amount shall be increased from time to time with each percentage increase in the Base Rent (and by the same percentage amount), the "**Optioned Sublease Space Base Rent**"), then Tenant shall pay to Landlord, as Replacement Base Rent, an amount equal to (A) the sum of (x) Net Optioned Sublease Rent plus (y) an amount equal to the lesser of (I) 50% of the difference between (X) the Optioned Sublease Space Base Rent minus (Y) the Net Optioned Sublease Rent and (II) Tenant' s Maximum Annual Sublease Base Rent Contribution, less (B) sixty-six percent (66%) of any Sublease Space Property Charges reasonably allocable to the Optioned Sublease Space during such period (it being agreed that, for the avoidance of doubt, Tenant shall continue to be obligated to pay all Sublease Space Property Charges allocable to the Optioned Sublease Space). For illustrative purposes only, assuming there are no Base Rent escalations or applicable Sublease Space Property Charges:

(AA) If the Net Optioned Sublease Rent is $1,000,000 per annum, then Tenant shall pay to Landlord, as Replacement Base Rent, an amount equal to $2,500,000 per annum (i.e., the sum of $1,000,000 and Tenant' s Maximum Annual Sublease Base Rent Contribution of $1,500,000).

(BB) If the Net Optioned Sublease Rent is $2,000,000 per annum, then Tenant shall pay to Landlord, as Replacement Base Rent, an amount equal to $3,200,000 per annum (i.e., the sum of $2,000,000 and $1,200,000 (being 50% of the $2,400,000 difference between $4,400,000 minus $2,000,000)).

(iii) If (1) a Third Party Sublease is in effect on the Sublease Option Start Date or at any time thereafter through the end of the Term (or any portion thereof) and (2) the Net Optioned Sublease Rent is greater than the Optioned Sublease Space Base Rent, then Tenant shall pay to Landlord, as Replacement Base Rent, an amount equal to (A) the sum of (x) the Optioned Sublease Space Base Rent plus (y) an amount equal to 50% of the difference between (I) the Net Optioned Sublease Rent minus (II) the Optioned Sublease Space Base Rent, less (B) sixty-six percent (66%) of any Sublease Space Property Charges reasonably allocable to the Optioned Sublease Space during such period (it being agreed that, for the avoidance of doubt, Tenant shall continue to be obligated to pay all Sublease Space Property Charges allocable to the Optioned Sublease Space). For illustrative purposes only, assuming there are no Base Rent escalations or applicable Sublease Space Property Charges, if the Net Optioned Sublease Rent is $6,000,000 per annum, then Tenant shall pay to Landlord, as Replacement Base Rent, an amount equal to $5,200,000 per annum (i.e., the sum of $4,400,000 and $800,000 (being 50% of the $1,600,000 difference between $6,000,000 minus $4,400,000)).

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(f) If (i) Tenant has not elected the Sublease Option with respect to both the Atlanta Sublease Space and the Haslet Sublease Space or (ii) the Properties constituting the Atlanta Sublease Space and the Haslet Sublease Space are not owned by the same Landlord (with Affiliated Landlords being considered to be the same Landlord for purposes of this clause (ii)), then all calculations shall be made on a Property-by-Property basis and shall not be aggregated (including replacing (A) the $4,400,000 numbers in clause (e) above with $3,126,000 for the Atlanta Sublease Space and $1,274,000 for the Haslet Sublease Space and (B) the $1,500,000 numbers in clause (e) above with $1,065,682 for the Atlanta Sublease Space and $434,318 for the Haslet Sublease Space).

(g) At all times following the delivery of a Sublease Option Notice, the Demised Premises shall remain subject to the terms and provisions of this Lease, including, without limitation, Tenant' s obligation to pay all Property Charges and other Additional Rent for the Optioned Sublease Space (but subject to Tenant' s right to deduct sixty-six percent (66%) of Sublease Space Property Charges allocable to such Optioned Sublease Space from the Replacement Base Rent as provided in Section 9.9(e) above). For the avoidance of doubt: (i) until the Sublease Option Start Date has occurred, Tenant shall be permitted to retain all rent received by Tenant under Third Party Subleases for the Optioned Sublease Space; (ii) the terms and provisions of this Section 9.9 shall continue to apply following any severance of this Lease with respect to the Atlanta Property and/or the Haslet Property; and (iii) at any time and from time to time following the delivery of a Sublease Option Notice with respect to any Optioned Sublease Space, Tenant shall have the right to enter into one or more Third Party Subleases (whether concurrently or successively) with respect to such Optioned Sublease Space. If at any time there is more than one Third Party Sublease in effect with respect to an Optioned Sublease Space, then (subject to clause (f) above) the calculations in clause (e) above shall be made on an aggregate basis for such Optioned Sublease Space.

ARTICLE X
MAINTENANCE

10.1 Maintenance and Repair.

(a) At all times during the Term, subject to the provisions of Article XII Tenant shall, at Tenant' s sole cost and expense, (i) maintain (without the prior written consent of Landlord) each Demised Premises and all Tenant' s Property with respect thereto in good order, condition and repair (ordinary wear and tear excepted) with the standard of care and quality taking into account the age of such Demised Premises and otherwise in compliance with all applicable Property Requirements and the Permitted Use, and (ii) promptly make all customary (consistent with past practice) or necessary capital repairs and replacements thereof and thereto of every kind and nature, including without limitation all Required Work, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, or arising by reason of Tenant' s use of the Demised Premises, any prior use thereof or otherwise (but excluding any such repairs, replacements or other Work to the extent the same are required as a result of Landlord' s gross negligence or willful misconduct), in each case, subject to ordinary wear and tear and taking

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into account the age of the applicable Demised Premises. In the event that the Parties cannot agree on the appropriate adjustment, either Party shall have the right to submit the same to expedited arbitration in accordance with the provisions of Section 27.1. Notwithstanding anything to the contrary herein and for the avoidance of doubt, in no event shall Tenant be in default of its obligations under this Section 10.1(a) solely as a result of its failure to perform any Required Work if Landlord' s consent is required with respect to such Work and Landlord unreasonably withholds such consent.

(b) Except as otherwise expressly required elsewhere in this Lease to the contrary, Landlord shall not under any circumstances be required to (i) build or rebuild any improvements with respect to any Demised Premises, (ii) maintain or make any repairs, Alterations, replacements or restorations of any nature of or to the Demised Premises, whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen, or (iii) to incur any costs or expenses in connection therewith. Except as otherwise expressly required elsewhere in this Lease, Tenant hereby unconditionally waives any rights Tenant may have pursuant to any applicable Legal Requirements in effect on the Commencement Date or hereafter enacted to make any repairs, Alterations, replacements or restorations, or to perform any maintenance, at the expense of Landlord.

ARTICLE XI
INSURANCE

11.1 General Insurance Requirements. Tenant shall obtain, pay for and maintain at all times during the Term, subject to Sections 11.2 and 11.4(a), the following insurance with respect to the Demised Premises and all property located therein or thereon, including Tenant' s Property:

(a) Insurance against all risk of physical loss or damage to the Leased Improvements and Fixtures as provided under "Special Causes of Loss" form coverage ("**All-Risk Insurance**"), including the perils of hail, windstorm, flood coverage (which coverage shall apply to all Properties without exclusions for Properties located in special flood hazard areas), earthquake and acts of terrorism, in amounts not less than the actual replacement cost of the Leased Improvements, Fixtures and Tenant' s Property without deduction for depreciation and waiving all co-insurance provisions or to be written on a no co-insurance form, which coverage may be fulfilled by a loss limit provided it otherwise meets the requirements herein. Such policy or policies shall contain limits for loss or damage caused by water, sprinkler leakage, debris removal, flood (including back-up of sewers and drains, seepage and surface water), subsidence, earthquake (including tsunami, if applicable), ordinance or law, and demolition and other commercially available coverages with amounts and terms determined by Tenant and reasonably acceptable to Landlord from time to time. If Tenant' s insurance company is unable or unwilling, or if Tenant otherwise elects, to include any or all of such excluded perils, then Tenant shall have the option of purchasing coverage against such perils from another insurer on a "Difference in Conditions" form or through one or more stand-alone policies. Such policies shall contain replacement cost and "Law and Ordinance" coverage (at full replacement cost) and joint loss agreements, and such policies shall not contain a "same or adjacent site clause" within the definition of replacement cost. Subject to Section 11.2, such policies and endorsements shall

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contain deductibles not more than Two Hundred Fifty Thousand Dollars ($250,000) per occurrence, with the exceptions of windstorm, hail, flood or earthquake (including tsunami, if applicable), which may have deductibles not more than five percent (5%) of the total insurable value of the individual Demised Premises or such other amount as approved by Landlord in its reasonable discretion;

(b) Comprehensive boiler and machinery/equipment breakdown insurance on any of the Fixtures or any other equipment on or in the Demised Premises, with a policy limit in an amount not less than the full replacement cost of the Leased Improvements per accident for damage to property, which coverage may be fulfilled by a loss limit provided it otherwise meets the requirements herein (and which may be carried as part of the coverage required pursuant to clause (a) above or pursuant to separate policies or endorsements);

(c) To the extent required by Landlord, and at Landlord' s sole cost and expense, subject to the further provisions of this clause (c), rental value insurance (a "**BI Policy**") in an amount determined by Landlord in its sole discretion, with an extended period of indemnity coverage of at least three hundred sixty-five (365) days necessitated by the occurrence of any of the hazards described in Section 11.1(a) or 11.1(b). Upon Notice from Landlord to Tenant that Landlord would like Tenant to obtain competitive quotes (each, a "**BI Policy Quote**" and collectively, the "**BI Policy Quotes**") for a BI Policy (with Landlord specifying in *such* Notice the desired number of months of coverage) and the provision of required information requested by any insurer or insurance agent in order for Tenant to obtain such quotes (to the extent such information is not available to Tenant), each of Landlord and Tenant shall use commercially reasonable efforts to deliver to the other Party not less than one (1) BI Policy Quote each (and any documentation, reasonably satisfactory to the other party, that evidences the pursuit of such quotes) for such BI Policy within fifteen (15) days of such Notice. Upon delivery of the BI Policy Quotes, Landlord shall, in its sole discretion, either (i) require Tenant to procure the BI Policy with the lower or lowest of the premiums among the BI Policy Quotes; provided, however, that the Parties acknowledge and agree that Tenant shall not be required to procure a BI Policy if obtaining such BI Policy will increase the cost of any other insurance coverages that Tenant' s Parent and/or any of its Subsidiaries are then maintaining for their properties (unless Landlord agrees to be solely responsible for such increased costs, with Tenant having the right to credit the same against installments of Base Rent coming due and payable hereunder if Landlord does not pay or reimburse Tenant for the same within ten (10) Business Days after Tenant' s request therefor, accompanied by reasonable supporting documentation), (ii) obtain and maintain its own BI Policy or (iii) elect not to obtain a BI Policy. Regardless of whether Landlord or Tenant obtains and maintains the BI Policy, Landlord shall pay all premiums required to obtain and maintain any such BI Policy. The Net Proceeds of any BI Policy shall be exclusively paid to and retained by Landlord and Tenant shall have no right to receive such proceeds;

(d) Claims for personal injury or property damage under a policy of comprehensive general liability insurance, including coverage for acts of terrorism, with (1) limits of not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) in the annual aggregate and with a retention or deductible not in excess of Two Hundred Fifty Thousand Dollars ($250,000) (subject to the provisions of Section 11.2), plus (2) at least Fifty Million Dollars ($50,000,000) excess and/or umbrella liability insurance shall be obtained and maintained on terms consistent with the commercial general liability insurance required above;

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(e) Workers' compensation insurance evidenced by Tenant on a per-state basis (with respect to the state in which each Demised Premises is located) and by a certificate of insurance on a "statutory basis" with minimum limits of "employers' liability" coverage of Five Hundred Thousand Dollars ($500,000) per occurrence;

(f) Motor vehicle liability insurance with coverage for all owned, non-owned and hired vehicles with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence for bodily injury and property damage. If no vehicles are owned or leased, the commercial general liability insurance shall be extended to provide insurance for non-owned and hired vehicles;

(g) During such time as Tenant is performing (or causing to be performed) any Work, (i) workers' compensation insurance (if required by law) and employers' liability insurance covering all Persons employed in connection with such Work in statutory limits, (ii) a completed operations endorsement to the commercial general liability insurance policy referred to above, (iii) builder' s risk insurance, completed value form (or its equivalent), covering all physical loss, in an amount and subject to policy conditions reasonably satisfactory to Landlord, and (iv) such other insurance (including amounts of coverage, deductibles and/or form of mortgagee clause) as Landlord deems reasonably necessary to protect Landlord' s interest in the Demised Premises from any act or omission of Tenant' s contractors or subcontractors; and

(h) Such other insurance (or other terms with respect to any insurance required pursuant to this Section 11.1, including amounts of coverage, deductibles and/or form of mortgagee clause) on or in connection with the Demised Premises as Landlord may reasonably require and that is (i) customarily carried or required by prudent "triple-net" tenants for comparable properties in the area of the applicable Demised Premises and (ii) available on commercially reasonable terms (as agreed to between the Parties).

Subject to the provisions of Article XII, by this Section 11.1, Tenant intends that the risk of loss or damage to each and every Demised Premises and all property thereon, including all Leased Improvements, Fixtures and Tenant' s Property, shall be borne solely by Tenant and its respective property insurance carriers and Tenant hereby agrees to look solely to, and to seek recovery only from such carriers, in the event of any such loss or damage to the extent that such coverage is agreed to be provided hereunder. For this purpose, any applicable deductible shall be treated as though it were recoverable under such policies.

11.2 Landlord' s Insurance. Notwithstanding anything to the contrary in this Lease, to the extent that, prior to the Commencement Date, Tenant' s Predecessor maintained deductibles with respect to any property or liability insurance coverage required to be obtained and maintained by Tenant hereunder that are higher than the maximum deductibles expressly set forth in Section 11.1, Tenant shall (subject to the succeeding proviso) be expressly permitted (without the same constituting an default or Event of Default hereunder) to maintain insurance coverage with deductibles equal to or less than such historical amounts; provided, however, that in no event may

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any such deductible exceed two percent (2%) of the then current Tangible Net Worth of the Lease Guarantors. In the event that Tenant maintains insurance coverage with deductibles that exceed the maximum deductible amounts set forth in Section 11.1 above (such excess amounts, the "**Excess Deductible Amounts**"), Landlord may (but shall not be obligated to) obtain at its expense so-called "buy-down" insurance coverage or other similar insurance coverage having the effect of reducing the deductibles then maintained by Tenant to the level of any applicable maximum deductible set forth in Section 11.1 above. If any insurance proceeds are paid pursuant to any "buy-down" insurance coverage or other similar insurance coverage maintained by Landlord, then Landlord shall be exclusively entitled to receive and retain such proceeds for its own account and shall have no obligation to pay over, or make available to Tenant, such proceeds in connection with a restoration of the affected Property or otherwise.

11.3 Waiver of Subrogation. To the extent commercially available from time to time, all insurance policies carried by either Party with respect to the Demised Premises or Tenant' s Property, including, without limitation, All-Risk Insurance and liability insurance, shall contain an express waiver of any right of subrogation on the part of the insurer against the other Party. Each Party shall pay any additional costs or charges necessary to obtain such waiver.

11.4 Policy Requirements.

(a) Tenant shall maintain each element of insurance described in this Article XI with respect to the Demised Premises and Tenant' s Property (as applicable) in the amounts of insurance described above and otherwise in accordance with all applicable Insurance Requirements.

(b) Tenant shall pay directly to the applicable insurance companies all premiums for and other costs and expenses necessary to obtain and maintain the insurance required under this Article XI (collectively, "**Insurance Costs**") as the same become due and payable.

(c) All insurance required to be maintained by Tenant under this Article XI shall be written by companies permitted to conduct business in each applicable State (provided, however, that the foregoing shall not require all such companies to be admitted in an applicable State). All such policies of insurance shall be written in a form reasonably satisfactory to Landlord and issued by insurance companies with a minimum policyholder rating of not less than "A-" and a financial rating of "VIII" in the most recent version of Best' s Key Rating Guide (the "**Best Insurer Rating**"). If and to the extent that Landlord elects to have any policies of insurance required to be maintained by Tenant under this Article XI with respect to any Property be issued by insurance companies with both the above-required Best Insurer Rating and a rating from S&P (an "**S&P Insurer Rating**"), then Landlord may elect, at its option, to require Tenant to replace such policies with policies issued by insurance companies that have an S&P Insurer Rating of not less than "A-" (the "**S&P Insurer Minimum Rating**"). In the event that Landlord makes such election, and the cost of obtaining such policies from (and/or maintaining such policies with) insurance companies with the S&P Insurer Minimum Rating exceed the cost of obtaining such policies from (and/or maintaining such policies with) insurance companies with the Best Insurer Rating (taking into account any deductible paid under any existing policy for which Tenant will

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not receive credit under a corresponding replacement policy), then Landlord shall be responsible for such excess cost. Notwithstanding the foregoing, (i) Tenant shall not be required to obtain such policies from (or maintain such policies with) insurance companies with the S&P Insurer Rating and the Best Insurer Rating if doing so will increase the cost of any other insurance coverages that Tenant' s Parent and/or any of its Subsidiaries are then maintaining for their properties (unless Landlord agrees to be solely responsible for such increased costs, with Tenant having the right to credit the same against installments of Base Rent coming due and payable hereunder if Landlord does not pay or reimburse Tenant for the same within ten (10) Business Days after Tenant' s request therefor, accompanied by reasonable supporting documentation) and (ii) Landlord may elect, prior to Tenant obtaining the applicable insurance policy(ies) referred to in this clause (c), to obtain any applicable insurance under this clause (c) on its own and at its own cost and expense. In the event that Landlord seeks to obtain any "wrap" policy of insurance that increases any applicable minimum policyholder rating from S&P or that gives the applicable insurer an S&P rating, then Tenant shall provide any information requested by the applicable insurer or insurance agent that is required in order for Landlord to obtain such "wrap" policy (to the extent that such information is not already available to Landlord).

(d) All liability insurance policies shall include Landlord (in addition to any Landlord Lender required pursuant to Section 11.4(e) below) as an "additional insured" thereunder. All property insurance policies shall include Landlord as a "loss payee" thereunder for its interest in each Demised Premises.

(e) All policies required to be maintained by Tenant under this Article XI shall, as appropriate, name as an "additional insured" and/or a "loss payee," each applicable Landlord Lender by way of a standard form of mortgagee' s loss payable endorsement. The All-Risk Insurance required under Section 11.1(a) shall provide thirty (30) days' prior written notice to Landlord and any applicable Landlord Lender of cancellation (or ten (10) days' prior written notice to Landlord and any applicable Landlord Lender for any non-payment of premium). Tenant shall promptly deliver to Landlord certificates of insurance evidencing the insurance required hereunder.

(f) Notwithstanding anything to the contrary herein, if any of the requirements or coverages set forth in Section 11.1 becomes unavailable on commercially reasonable terms, then, upon Tenant' s request, Landlord and Tenant shall negotiate in good faith to reasonably agree upon alternative requirements or coverages which are then available in the marketplace on commercially reasonable terms.

11.5 Blanket Policy. Notwithstanding anything to the contrary contained in this Article XI, Tenant' s obligations to carry the liability insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that such blanket policy or policies otherwise satisfy the requirements of this Article XI. Tenant shall promptly deliver to Landlord certificates of insurance evidencing such blanket policy or policies.

11.6 No Separate Insurance. Tenant shall not, on Tenant' s own initiative or pursuant to the request or requirement of any third party, (a) take out separate insurance concurrent in form

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with or contributing to the insurance required under this Article XI to be furnished by Tenant or (b) increase the amounts of any then-existing insurance by securing an additional insurance policy or policies, unless all parties having an insurable interest in the subject matter of the applicable insurance coverage, including in all cases Landlord and all applicable Landlord Lenders, are included therein as additional insureds and/or loss payees (as applicable) and the loss is payable under such insurance policy or policies in the same manner as losses are payable under this Lease. Tenant shall promptly notify Landlord of any such separate insurance and shall promptly deliver to Landlord certificates of insurance evidencing such coverage.

ARTICLE XII
CASUALTY AND CONDEMNATION

12.1 Casualty; Property Insurance Proceeds.

(a) Tenant shall promptly give Landlord Notice of the occurrence of any Casualty for which the loss would reasonably be expected to exceed Two Hundred Fifty Thousand Dollars ($250,000). Except as otherwise provided in Section 12.2(b), following any Casualty, the Net Proceeds with respect thereto shall be paid, held and applied as follows: (x) first, so long as no Event of Default then exists, the first Five Million Dollars ($5,000,000) (the "**Restoration Threshold**") (or, if the amount of the Net Proceeds is less than the Restoration Threshold, the full amount thereof) shall be paid to Tenant, and (y) second, any remaining Net Proceeds shall be paid into an escrow account held by a nationally recognized Title Company or another nationally recognized institutional third party depository selected by Landlord and reasonably approved by Tenant (the "**Restoration Escrow Agent**") pursuant to an escrow agreement (the "**Restoration Escrow Agreement**") consistent with the terms of this Section 12.1 and otherwise reasonably acceptable to the Parties. Tenant acknowledges that Landlord shall have the right to collaterally assign Landlord' s interest in any such Restoration Escrow Agreement to any applicable Landlord Lender, and shall, promptly following Landlord' s written request, acknowledge and agree to any such collateral assignment pursuant to documentation in form and substance reasonably acceptable to the Parties; provided, however, that, so long as no Event of Default then exists, the consent or approval of such Landlord Lender shall not be required for any Disbursement Request that complies with the provisions of this Section 12.1. Any such Restoration Escrow Agreement shall provide for the disbursement by the Restoration Escrow Agent of the Net Proceeds held by it to Tenant in installments as restoration of the affected Demised Premises progresses promptly following Tenant' s written request therefor (a "**Disbursement Request**"), subject to the following disbursement conditions (the "**Restoration Conditions**"):

(i) no Event of Default then exists as of the date of the Disbursement Request or the date of the applicable disbursement;

(ii) (A) Landlord shall have approved (which approval shall not be unreasonably withheld, conditioned or delayed, and shall be subject to the Deemed Approval Procedure) the plans and specifications for the restoration work; and (B) Tenant shall have provided Landlord with (I) a list of the architects, engineers, contractors (but not any subcontractors) and other construction professionals (collectively, the

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"**Construction Professionals**") selected by Tenant to perform such restoration work and (II) evidence reasonably satisfactory to Landlord that such restoration work will, once completed in accordance with the approved plans and specifications, comply in all material respects with all Legal Requirements;

(iii) if the Guarantor Financial Covenants are not then satisfied, the Net Proceeds shall be sufficient to perform the restoration work or, if not, Tenant shall have provided Landlord with reasonable assurances that sufficient funds will be available from Tenant (or Lease Guarantors) to pay such deficiency;

(iv) on the date of the applicable Disbursement Request, no mechanics' or materialmen' s liens, stay orders or notices of pendency shall have been filed against the affected Demised Premises, except to the extent that Tenant shall have Bonded the same in accordance with this Agreement;

(v) such disbursements shall not be made more frequently than once per calendar month;

(vi) the Restoration Escrow Agent shall retain ten percent (10%) of the aggregate amount of the Net Proceeds held by it from time to time until the final draw request;

(vii) with each draw request, Tenant shall have delivered to the Restoration Escrow Agent (A) a certification by the applicable architect that such restoration work that is the subject of the applicable disbursement has been performed substantially in conformance with the approved plans and specifications and (B) lien waivers for all completed work that is the subject of such draw request; and

(viii) with respect to the final draw request, Tenant shall have delivered to the Restoration Escrow Agent (A) a certification by the applicable architect that such restoration work has been completed substantially in conformance with the plans and specifications and Legal Requirements and (B) final lien waivers for all work.

(b) All Net Proceeds paid to Tenant in accordance with the provisions of the Restoration Escrow Agreement and any other Net Proceeds paid to Tenant shall be used first for the restoration of the Demised Premises to substantially the same (or better) condition as existed immediately before the applicable Casualty and with materials and workmanship of like kind and quality and otherwise in accordance with the Construction Standards. Any excess Net Proceeds remaining after the completion of such restoration shall, so long as no Event of Default then exists (in which event all such excess Net Proceeds shall be payable to Landlord), be (i) retained by Tenant if the total Net Proceeds with respect to the applicable Casualty do not exceed the Restoration Threshold or (ii) split equally between the Parties if such total Net Proceeds exceed the Restoration Threshold. All salvage resulting from any risk covered by insurance for damage or loss to the Demised Premises shall belong to Tenant. Provided that no Event of Default then exists, subject to the last sentence of this Section 12.1(b), Tenant shall have the exclusive right, at its sole cost and expense, to adjust, collect and compromise insurance claims payable in

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connection with any Casualty, and to execute and deliver on behalf of Landlord all necessary proofs of loss, receipts, vouchers and releases required by the applicable insurers. Landlord agrees to sign, upon the reasonable request of Tenant, all such proofs of loss, receipts, vouchers and releases. Landlord shall have the right to join Tenant in any adjustment, collection or compromise of insurance claims payable in connection with any Casualty that exceeds the Restoration Threshold; provided, however, that so long as no Event of Default exists, any such joinder and participation by Landlord shall be diligent, expeditious and in good faith.

12.2 Tenant' s and Landlord' s Obligations Following Casualty and Tenant' s Right to Terminate. If any Demised Premises shall be damaged by any Casualty, whether or not such damage is covered by insurance required to be maintained herein, (a) regardless of whether any Net Proceeds are available or sufficient, Tenant shall promptly commence the restoration of the applicable Demised Premises in accordance with the Construction Standards and diligently pursue the completion of such restoration (and, if required under the terms of any applicable Restoration Escrow Agreement, the Restoration Conditions), and (b) such damage shall not give rise to any termination of this Lease; provided, however, that in the event of a Casualty that damages or destroys fifty percent (50%) or more of the Gross Leasable Square Footage of the Leased Improvements with respect to any Demised Premises and such Casualty either (i) occurs within twenty-four (24) months prior to the expiration of the then current Term (which, for purposes of this Section 12.2, shall include any Renewal Term as to which Tenant has exercised a Renewal Option, regardless of whether such Renewal Term has commenced) or (ii) occurs during any Renewal Term (in each case, a "**Major Casualty**"), then Tenant shall have the right, exercisable by delivering Notice to Landlord thereof (a "**Major Casualty Termination Notice**") by the earlier to occur of (x) the date that is one hundred eighty (180) days following the occurrence of such Major Casualty and (y) the date that is thirty (30) days following the date that the applicable insurance proceeds have been finally adjusted, to elect not to restore, and to terminate this Lease solely with respect to, the applicable Demised Premises affected by such Major Casualty, subject in each case to and on the terms and conditions set forth herein. A Major Casualty Termination Notice shall (x) set forth the date as of which this Lease shall terminate with respect to the affected Demised Premises, which shall not be later than one hundred eighty (180) days following Tenant' s delivery of such Major Casualty Termination Notice to Landlord (the "**Casualty Termination Date**") and (y) constitute a binding and irrevocable commitment of Tenant to pay the Casualty Termination Amount on such Casualty Termination Date.

(a) If Tenant is required to restore any Demised Premises affected by a Casualty under the terms of this Article XII and the cost of such restoration exceeds the amount of the Net Proceeds payable in connection with such Casualty, or if there are no such Net Proceeds, then in either such case, Tenant shall pay any excess amounts needed to complete such restoration.

(b) If Tenant elects not to restore any applicable Demised Premises following a Casualty in accordance with the express provisions of this Article XII, then the Net Proceeds (other than any portion thereof payable on account of Tenant' s Property) shall (subject to the provisions of any Landlord Mortgage) be retained by Landlord free and clear of any claim by or through Tenant.

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(c) If Tenant delivers a Major Casualty Termination Notice following a Major Casualty with respect to any Demised Premises in accordance with Section 12.2, then, on the applicable Casualty Termination Date, (i) this Lease shall terminate solely with respect to such Demised Premises, (ii) Tenant shall surrender to Landlord such Demised Premises in accordance with the applicable terms and conditions of this Lease, (iii) such Demised Premises shall be automatically removed from this Lease and shall no longer be a part of the "Demised Premises" hereunder, (iv) all Rent shall be adjusted, and Tenant' s obligations hereunder with respect to such Demised Premises shall terminate, in each case in accordance with (and subject to) Section 1.10, (v) Tenant shall assign to Landlord all of Tenant' s right, title and interest in and to all insurance proceeds payable under its All-Risk Insurance in connection with the related Major Casualty, less Tenant' s Costs and Expenses incurred in connection therewith, and (vi) Tenant shall pay to Landlord the Casualty Termination Amount. As used herein, "**Casualty Termination Amount**" means, with respect to any Property that is subject to a Major Casualty, an amount equal to the Excess Deductible Amount with respect to the All-Risk Insurance then maintained by Tenant (without reduction for any proceeds that may be payable to Landlord for any "buy-down" or other similar policy then being maintained by Landlord at its expense in accordance with Sections 11.1 and 11.2).

12.3 Express Agreement. The provisions of Sections 12.1 and 12.2 shall be deemed an express agreement governing any case of damage or destruction of any Demised Premises by Casualty, and Section 227 of the Real Property Law of the State of New York, providing for such a contingency in the absence of an express agreement, and any other law of like import, now or hereafter in force, shall have no application in such case.

12.4 Condemnation.

(a) Each of Landlord and Tenant shall promptly give the other Party Notice of any actual or threatened (in writing) Condemnation of which it becomes aware, and, to the extent that the other Party has not otherwise received the same, shall promptly deliver to such other Party copies of any and all documents served on or received by it in connection with such Condemnation.

(b) In the event that any Condemnation (other than a Temporary Condemnation) occurs with respect to (i) the entirety of any Demised Premises or (ii) any portion (but less than the entirety) of any Demised Premises or Property and such partial Condemnation results in (A) the Demised Premises becoming Unsuitable for its Intended Use or (B) a permanent and total loss of all or so much of the access to or from such Demised Premises or Property, or the parking therefor, so as to render the same inadequate for the operation of such Demised Premises on a commercially practicable basis, unless Landlord provides such alternative, reasonably comparable access or parking (including truck parking, access to truck bays and docks and turnarounds) as to remedy such inadequacy without interruption following such Condemnation (such that there is no material disruption to Tenant' s use and enjoyment of the Demised Premises) (each, a "**Major Condemnation**"), then in either such case, at the option of Tenant, upon Notice to Landlord at any time prior to the date of such Major Condemnation, this Lease shall terminate solely with respect to such affected Demised Premises on the effective date of such Major Condemnation (the "**Condemnation Termination Date**").

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(c) In the event that any Temporary Condemnation occurs with respect to any Demised Premises, this Lease shall continue in full force and effect and Tenant shall be entitled to receive the entire Net Award with respect thereto. Notwithstanding anything to the contrary herein, during the pendency of any such Temporary Condemnation, Tenant' s compliance with the terms of this Lease that relate to the affected Demised Premises shall be subject to the terms of any applicable Condemnation order or agreement with the applicable Governmental Authority and Tenant covenants that, following the date as of which any such Temporary Condemnation is no longer in effect, Tenant shall restore the applicable Demised Premises as nearly as may be reasonably possible to its condition, character and quality immediately prior to such Temporary Condemnation and otherwise in compliance with all applicable Property Requirements and the terms of this Lease, unless such period of temporary use or occupancy extends beyond the expiration of the Term, in which case Tenant shall not be required to make such restoration.

(d) In the event of any Major Condemnation, on the applicable Condemnation Termination Date, (i) this Lease shall terminate solely with respect to the affected Demised Premises, (ii) Tenant shall surrender to Landlord any portion of such Demised Premises that is not subject to such Condemnation in accordance with the applicable terms and conditions of this Lease, (iii) such Demised Premises shall be automatically removed from this Lease and shall no longer be a part of the "Demised Premises" hereunder and (iv) the Base Rent and applicable Property Charges shall be adjusted, and Tenant' s obligations hereunder with respect to such Demised Premises shall terminate, in each case in accordance with (and subject to) Section 1.10.

12.5 Tenant' s Restoration Obligations; Net Awards.

(a) If a Condemnation (other than a Temporary Condemnation, which shall be governed by Section 12.4(c)) occurs with respect to any Demised Premises and this Lease does not terminate with respect to such Demised Premises pursuant to Section 12.4(b):

(i) regardless of whether any Net Award in connection therewith is sufficient for such restoration, but subject to the following provisions of this Section 12.5, Tenant shall promptly proceed to restore the Demised Premises as nearly as possible to its condition, character and quality immediately prior to such Condemnation and otherwise in compliance with all applicable Property Requirements and the terms of this Lease; provided, however, that, prior to the commencement of such restoration, (A) Tenant shall obtain not fewer than three (3) written bids from reputable general contractors or construction managers (each, a "**General Contractor")** (which shall not be Affiliates of Tenant) with respect to such restoration and, promptly following its receipt of such bids, provide Landlord Notice thereof and copies of any material documents received by Tenant in connection therewith; (B) Tenant may select the bid and General Contractor of its choice, in each case, in its commercially reasonable judgment (provided, however, that such selection, together with the form and substance of the applicable construction agreement (the "**Approved Restoration Contract**") and any related material trade contracts shall be subject to Landlord' s approval, which shall not be unreasonably withheld, conditioned or delayed, and shall be subject to the Deemed Approval Procedure); and (C) the architects, engineers, and other Construction Professionals (other than the General Contractor), as well as the plans and specifications, shall have been

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reasonably approved by Landlord (with Tenant having the right to submit any such request for approval pursuant to the Deemed Approval Procedure). If Landlord withholds its approval of any agreement, contract, plans, specifications and/or Construction Professionals pursuant to this clause (i), then the Parties shall consult with each other in good faith until the Parties have reached agreement on the applicable matter;

(ii) the applicable Net Award shall be paid (A) first, so long as no Event of Default then exists, that portion of the Net Award that does not exceed the Restoration Threshold shall be paid to Tenant and (B) second, any portion of such Net Award that does exceed the Restoration Threshold shall be paid to and held by a Restoration Escrow Agent pursuant to a Restoration Escrow Agreement, and disbursed to Tenant for restoration of the affected Demised Premises subject to the Restoration Conditions, in each case, in accordance with (and subject to) the terms of Section 12.1(a)(i) and (iii)-(viii) only; and

(iii) if, based on the Approved Restoration Contract and any related material trade contracts and other supporting documentation provided to Landlord, Tenant reasonably determines that the Net Award shall be insufficient to cover the total cost of the restoration of the Demised Premises, then Tenant shall, prior to the commencement of such restoration, deliver to Landlord an Officer' s Certificate pursuant to which Tenant shall certify to Landlord the estimated amount of such deficiency (the "**Deficiency Amount**") and, within thirty (30) days after the (A) substantial completion of the applicable restoration work and (B) receipt by Landlord of all paid invoices and lien waivers for such restoration work (the "**Restoration Substantial Completion Date**"), Landlord shall, so long as no Event of Default then exists, pay to Tenant (or, if Landlord fails to make such payment within thirty (30) days after the Restoration Substantial Completion Date, provide to Tenant a credit against the Base Rent coming due from and after such Restoration Substantial Completion Date) in an amount equal to the lesser of (1) the Deficiency Amount and (2) the Costs and Expenses incurred by Tenant in excess of the Net Award to complete such work; provided, however, that in no event shall Landlord be required to pay or reimburse Tenant for any development or other fee payable to any Tenant Party or any Affiliate of a Tenant Party. Other than the reimbursement obligation expressly set forth in the immediately preceding sentence, Landlord shall have no obligations or liabilities with respect to any such restoration work, and for the avoidance of doubt, Tenant shall be solely responsible for any cost overruns or change orders that may accrue or become necessary in connection with such restoration work.

(b) So long as no Event of Default then exists (in which event all such excess Net Award shall be payable to Landlord), subject to the provisions of Section 12.4(c), the remaining amount (if any) of any Net Award following Tenant' s restoration of any Demised Premises pursuant to Section 12.5(a), and the entire amount of any Net Award in the event of a termination of this Lease resulting from the applicable Condemnation pursuant to Section 12.4(b), shall in each case be allocated among and paid to the Parties as follows: (i) first, to Landlord in an amount equal to the fair market value of Landlord' s interest (which interest shall be valued subject to this Lease) in the portion of the Demised Premises so taken (exclusive of Permissible Alterations made by Tenant with Landlord' s consent (to the extent such consent was required

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hereunder) during the Term), as determined by the applicable Governmental Authority in connection with such Condemnation, or, if such amount is not separately determined by such Governmental Authority, as reasonably determined by the Parties on the basis of an MAI Appraisal prepared by a nationally recognized appraiser selected by Landlord and reasonably approved by Tenant; (ii) second, to Tenant in an amount equal to the sum of (x) the fair market value of Tenant' s leasehold estate in such portion of the Demised Premises so taken for the then remaining Term, as determined by such Governmental Authority, or, if such amount is not separately determined by the Governmental Authority, as reasonably determined by the Parties on the basis of such MAI Appraisal and (y) any other sums, including the fair market value of any Permissible Alterations made by Tenant with Landlord' s consent (to the extent such consent was required hereunder) during the Term, recoverable by Tenant, as determined by such Governmental Authority, or, if such amount is not separately determined by such Governmental Authority, as reasonably determined by the parties on the basis of such MAI Appraisal; and (iii) third, to Landlord the remaining amount (if any) of such Net Award. Notwithstanding the foregoing, Landlord shall have the sole and exclusive power to collect, receive and retain any and all Awards and to make any compromise or settlement in connection with any Condemnation; provided, however, that so long as no Event of Default then exists, Tenant shall be entitled to participate with Landlord in, and to approve, any such compromise or settlement solely to the extent that the same relates to the portion of the Net Award payable to Tenant.

(c) Nothing herein shall be deemed to preclude Tenant from seeking and retaining its interest in a separate award to Tenant for Tenant' s Property and/or (subject to the provisions of any Legal Requirements) Tenant' s moving expenses, business dislocation damages or other similar claims (provided, however, that such claim shall not reduce the Award that would otherwise be paid over or assigned to Landlord).

ARTICLE XIII
DEFAULT

13.1 Events of Default. The occurrence of any of the following shall constitute an "**Event of Default**":

(a) Tenant shall fail to pay any Base Rent or Replacement Base Rent when due; provided, however, that, not more than twice in any twelve (12) month period, any such failure to pay Base Rent or Replacement Base Rent when due shall not be an Event of Default unless such failure continues for three (3) Business Days after Landlord delivers Notice of such failure to Tenant;

(b) Tenant shall fail to pay any Additional Rent when due and such failure continues for thirty (30) days after Landlord delivers Notice of such failure to Tenant;

(c) any Tenant Party shall voluntarily cause the liquidation or dissolution of itself or any other Tenant Party;

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(d) Tenant or any Lease Guarantor shall:

(i) admit in writing its inability to pay its debts generally as they become due;

(ii) make a general assignment for the benefit of its creditors; or

(iii) file a petition or institute proceedings under the Bankruptcy Code or any other laws of the United States or any state or other jurisdiction thereof relating to bankruptcy, insolvency, reorganization or relief of debtors (collectively, "**Bankruptcy Laws**"), in each case (A) seeking to adjudicate it or any other Tenant Party as bankrupt or insolvent, (B) seeking liquidation, dissolution, winding up, reorganization, arrangement, adjustment, protection, relief or composition of its or any other Tenant Party or the debts of it or any other Tenant Party or (C) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or any other Tenant Party or any substantial portion of its assets or properties (each, an "**Insolvency Event**");

(e) any Insolvency Event caused by any Person other than a Tenant Party shall occur with respect to Tenant or any Lease Guarantor and such Insolvency Event shall not be dismissed, vacated, set aside or stayed within sixty (60) days following the date of such occurrence; provided, however, that (i) if any Tenant Party colluded with creditors to cause the occurrence of such Insolvency Event under this Section 13.1(e), the foregoing sixty (60) day cure period shall not apply and (ii) no Insolvency Event with respect to any Lease Guarantor under this Section 13.1(e) shall be an Event of Default so long as (A) such Insolvency Event was not caused by a Tenant Party or an Affiliate of any Tenant Party, (B) no Tenant Party or Affiliate thereof colluded with creditors to cause such Insolvency Event, (C) the Tenant Parties exercised commercially diligent efforts to cause such Insolvency Event to be dismissed, vacated, set aside or stayed during such sixty (60) day cure period, and (D) the Lease Guarantors not subject to any such Insolvency Proceeding continue, collectively, to comply with the Guarantor Financial Covenants or, within the earlier to occur of (1) the Financial Covenant Cure Period and (2) such sixty (60) day cure period, Tenant provides a Replacement Guarantor for the Lease Guarantor that is the subject of such Insolvency Event and such Replacement Guarantor (together with any Continuing Guarantors) satisfies the Guarantor Financial Covenants;

(f) Tenant shall fail to maintain any insurance coverage required to be maintained pursuant to Article XI;

(g) Tenant shall assign this Lease or any Corporate Transaction shall occur, in each case, in violation of Article IX; provided, however, that any such violation pursuant to this Section 13.1(g) shall not be an Event of Default if the related Transfer violation shall be entirely revoked or rescinded by the applicable Tenant Party within thirty (30) days after the occurrence of such violation;

(h) Lease Guarantors fail to satisfy the Guarantor Financial Covenants; provided, however, that any such failure shall not be an Event of Default if, within forty-five (45) days after Notice from Landlord thereof (the "**Financial Covenant Cure Period**"), Lease

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Guarantors shall (i) maintain (as evidenced by documentation reasonably satisfactory to Landlord) Liquid Assets of an amount equal to or in excess of the total Base Rent coming due under this Lease for the immediately succeeding eighteen (18)-month period (which for purposes of this clause (h) shall not take into account any adjustments for Optioned Sublease Space pursuant to clause (d) of the definition of Base Rent) or (ii) otherwise cure such failure, which may be effectuated by, without limitation, a Replacement Guarantor' s execution of a Replacement Guaranty, subject to the applicable provisions of this Lease;

(i) Tenant shall incur any secured Indebtedness that is not Permitted Indebtedness;

(j) if any Lease Guarantor shall affirmatively repudiate in writing (or in a pleading or other procedural action in any legal proceeding) any Lease Guaranty or the Environmental Indemnity Agreement;

(k) Tenant or any Lease Guarantor shall fail to deliver any Annual Financial Statements, Quarterly Financial Statements, Reporting Package, Permitted Sublease Reports or the other financial reporting required by Section 20.21(d)(i), in each case, as and when the same is required pursuant to the terms of this Lease and such failure continues for thirty (30) days after Notice thereof from Landlord to Tenant or such Lease Guarantor (as applicable);

(l) Tenant shall fail to execute a Severed Lease or any Severed Lease Ancillary Documents by the applicable Lease Severance Deadline and such failure continues for seven (7) days after Landlord delivers Notice of such failure to Tenant (a "**Lease Severance Event of Default**");

(m) if Tenant or any Lease Guarantor shall fail to observe or perform any other term, covenant or condition of this Lease or the other Lease Documents to which each is a party; provided, however, that (i) if such failure relates to a non-monetary obligation of Tenant or such Lease Guarantor (as applicable), then the same shall not constitute an Event of Default so long as Tenant or such Lease Guarantor (as applicable) cures such failure within thirty (30) days after Notice thereof from Landlord to Tenant or such Lease Guarantor (as applicable) (the "**Initial Cure Period**"); (ii) if any such failure to perform a non-monetary obligation shall be of such a nature that it cannot reasonably be cured within such Initial Cure Period (a "**Longer-Term Cure Default**") (it being understood that a failure by Tenant to deliver any estoppel certificate pursuant to Section 24.1 shall not be deemed to constitute a Longer-Term Cure Default, Tenant hereby acknowledging that any such failure may be cured within such Initial Cure Period), then, so long as Tenant or such Lease Guarantor (as applicable) promptly commences such cure following Landlord' s initial Notice of such failure and thereafter diligently and continuously prosecutes such cure, Tenant or the applicable Lease Guarantor shall have an additional period in which to complete such cure, which additional period shall in no event exceed an aggregate of ninety (90) days following the expiration of the Initial Cure Period (such additional period, the "**Additional Cure Period**"); and (iii) if any such Longer-Term Cure Default is an Extra Extended Cure Default, then Tenant or the applicable Lease Guarantor shall have an additional period in which to complete the cure of such Extra Extended Cure Default pursuant to the provisions of Section 13.1(n) below; and

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(n) if an Extra Extended Cure Default has not been cured by the expiration of the Additional Cure Period, then Tenant shall have the right to cure such Extra Extended Cure Default during up to four (4) additional consecutive thirty (30) day extensions, each of which shall be subject to the satisfaction by Tenant of each of the following conditions for each applicable Extra Extended Cure Period in order for Tenant to qualify for each such Extra Extended Cure Period: (i) such Extra Extended Cure Default shall be capable of being cured by the end of the Fourth Extra Extended Cure Period; (ii) Tenant or the applicable Lease Guarantor shall, prior to the commencement of the applicable Extra Extended Cure Period, have been diligently pursuing and using commercially reasonable efforts to effectuate the cure of such Extra Extended Cure Default; and (iii) not less than two (2) Business Days prior to the commencement of each applicable Extra Extended Cure Period, Tenant shall deliver to Landlord (i) written Notice exercising such Extra Extended Cure Period for such Extra Extended Cure Default and (ii) the Extra Extended Cure Payment required for such Extra Extended Cure Period. For purposes of this Section 13.1(n), the "**Extra Extended Cure Payment**" means, for each Extra Extended Cure Period for the applicable Property where an Extra Extended Cure Default exists: (A) for the first thirty (30) days following the expiration of the Additional Cure Period (the "**First Extra Extended Cure Period**"), a payment in an amount equal to ten percent (10%) of the monthly Base Rent Allocation Amount for such Property, (B) for the thirty (30) days following the expiration of the First Extra Extended Cure Period (the "**Second Extra Extended Cure Period**"), a payment in an amount equal to fifteen percent (15%) of the monthly Base Rent Allocation Amount for such Property, (C) for the thirty (30) days following the expiration of the Second Extra Extended Cure Period (the "**Third Extra Extended Cure Period**"), a payment in an amount equal to twenty percent (20%) of the monthly Base Rent Allocation Amount for such Property, and (D) for the thirty (30) days following the expiration of the Third Extra Extended Cure Period (the "**Fourth Extra Extended Cure Period**"), a payment in an amount equal to twenty-five percent (25%) of the monthly Base Rent Allocation Amount for such Property. Tenant acknowledges and agrees that: (1) each Extra Extended Cure Payment shall be deemed earned in full on the date of such payment, shall not be prorated for any partial month if the related Extra Extended Cure Default is cured prior to the expiration of the applicable Extra Extended Cure Period, and in no event shall Tenant be entitled to any reimbursement of such Extra Extended Cure Payment once paid, whether or not the Extra Extended Cure Default is cured during the applicable Extra Extended Cure Period; (2) in the event Tenant fails to exercise or fails to qualify for an Extra Extended Cure Period, Landlord shall be entitled to exercise its remedies in accordance with this Lease with respect to such Extra Extended Cure Default (provided that the same has not been cured); (3) irrespective of whether or not an Extra Extended Cure Period is in effect, in no event shall Landlord have any limitation on its ability to exercise its remedies during the existence of an Event of Default that is not an Extra Extended Cure Default; and (4) an Extra Extended Cure Period shall only be available for a default that is an Extra Extended Cure Default, and the right to obtain an Extra Extended Cure Period pursuant to this Section 13.1(n) shall in no event apply to any default or failure by Tenant to perform its obligations under this Lease that is not an Extra Extended Cure Default. For the avoidance of doubt, so long as the conditions set forth in this Section 13.1(n) are satisfied with respect to an Extra Extended Cure Period, in no event shall the related Extra Extended Cure Default be deemed an Event of Default under this Lease.

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13.2 Certain Remedies. Upon the occurrence and during the continuance of an Event of Default, Landlord shall have the right, at its sole option, concurrently, successively, or in any combination, to:

(a) upon Notice to Tenant, terminate this Lease (an "**EOD Termination**") effective as of the termination date set forth in such Notice (an "**EOD Termination Date**");

(b) upon Notice to Tenant, in connection with any EOD Termination pursuant to the foregoing clause (a), accelerate the Rent and recover from Tenant the Acceleration Amount in accordance with Section 13.3(c)(ii);

(c) whether or not Landlord has terminated this Lease, terminate Tenant' s right of possession of all or any portion of the Demised Premises, upon which Tenant shall, as promptly as practicable (and in all events within six (6) months after Landlord' s notice of such termination of possession), surrender to Landlord possession thereof (with Tenant' s Property removed), and Landlord may enter upon and repossess such Demised Premises by summary proceedings, ejectment or otherwise and/or remove Tenant and all other Persons and any Tenant' s Property or Alterations (other than any Permissible Alterations) from such Demised Premises;

(d) immediately set off any money of Tenant or any Lease Guarantor held by Landlord under this Lease or any other Lease Document against any amounts owing by Tenant or any Lease Guarantor; and/or

(e) exercise any other right or remedy available to Landlord at law or in equity in connection with such Event of Default (except to the extent that any such right or remedy is inconsistent with clauses (a) through (d) above). Tenant shall pay as Additional Rent all Costs and Expenses incurred by or on behalf of Landlord, including reasonable attorneys' fees and expenses, and court costs, as a result of any Event of Default.

13.3 Damages.

(a) Unless Landlord shall expressly agree otherwise in writing, none of (i) the exercise and/or enforcement by Landlord of any of its rights or remedies set forth in this Article XIII, (ii) the failure of Landlord to re-let all or any portion of any Demised Premises, (iii) the reletting of all or any portion of any Demised Premises or (iv) the inability of Landlord to collect or receive any rentals due upon any such reletting, shall relieve Tenant of any of its duties, obligations or liabilities under this Lease, all of which shall survive any termination of this Lease or other exercise or enforcement by Landlord of any of its rights or remedies hereunder.

(b) Notwithstanding anything to the contrary in this Lease, Tenant hereby agrees that Landlord shall have no duty or obligation to mitigate any of Landlord' s damages under this Lease unless, and then only to the extent that, the Legal Requirements of any applicable State impose such a duty or obligation on Landlord with respect to its exercise of remedies in that State.

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(c) If Landlord accelerates the Rent pursuant to Section 13.2(b) (whether or not Landlord terminates Tenant' s right to possession of the applicable Demised Premises), Tenant shall immediately pay to Landlord:

(i) all Rent due and payable under this Lease with respect to the entire Demised Premises through and including the applicable EOD Termination Date; and

(ii) as liquidated and agreed upon final damages for the occurrence of such Event of Default, the Present Value of the excess, if any, of (1) the sum of all Base Rent, Additional Rent and other sums that would be payable under this Lease by Tenant with respect to the entire Demised Premises from the date of such demand through and including the then current Expiration Date (i.e., in the absence of the applicable EOD Termination, and taking into account any extension of such Expiration Date pursuant to any exercised Renewal Options) over (2) the Fair Market Rent for the entire Demised Premises for the same period (collectively, the "**Acceleration Amount**").

(d) In the event of (i) any EOD Termination in connection with which Landlord elects not to accelerate the Rent and recover from Tenant the Acceleration Amount or (ii) any termination by Landlord of Tenant' s right to possession of any Demised Premises pursuant to Section 13.2(c), Tenant shall, until the Expiration Date (i.e., in the absence of the applicable EOD Termination, and taking into account any extension of such Expiration Date pursuant to any exercised Renewal Options), and whether or not Landlord shall have re-let all or any portion of any Demised Premises, pay the excess of all Rent and other sums payable by Tenant to Landlord under this Lease with respect to the entire Demised Premises as the same become (or would become, in the absence of any such EOD Termination) due and payable hereunder, together with interest at the Default Rate from the date the same become (or would become, in the absence of any such EOD Termination) due until paid, over (without limiting anything in Section 13.2(b)) rents and other sums received by Landlord for the applicable period pursuant to any reletting of such Demised Premises (or any portion thereof), and Landlord may enforce, by action or otherwise, any other term or covenant of this Lease.

13.4 Holdover. In the event that Tenant remains in possession of any Demised Premises after the expiration or earlier termination of this Lease without the prior written consent of Landlord (which may be granted or withheld in Landlord' s sole and absolute discretion), (a) Tenant shall, at the option of Landlord, be deemed to be occupying such Demised Premises as a tenant from month to month, subject to all of the terms and conditions of this Lease, (b) Tenant shall pay Base Rent (and/or any Replacement Base Rent, as applicable) in effect with respect to such Demised Premises as of the Payment Date immediately preceding the date of such expiration or termination multiplied by (i) one hundred twenty-five percent (125%) for the first thirty (30) days of its holdover, (ii) one hundred thirty-five percent (135%) for the next thirty (30) days of its holdover, (iii) one hundred forty-five percent (145%) for the next thirty (30) days of its holdover, (iv) one hundred fifty-five percent (155%) for the next thirty (30) days of its holdover, and (ii) one hundred sixty-five percent (165%) for the remainder of its holdover, (c) Tenant shall remain liable for the payment and performance of all of its other obligations under this Lease, including, without limitation, the payment of all Additional Rent, during the period of any such holdover, and (d) if Tenant holds over for more than ninety (90) days, Tenant shall be liable for all Claims incurred or

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suffered by Landlord as a result of Tenant' s holdover, including without limitation, any damages suffered by Landlord resulting from the termination by an incoming tenant of its proposed lease for all or any portion of the Demised Premises.

13.5 Receiver. Without limiting any of the foregoing provisions of this Article XIII, upon the occurrence and during the continuance of an Event of Default, Landlord shall be entitled, as a matter of right, to apply for and have a receiver or receivers acceptable to Landlord appointed under applicable Legal Requirements by a court of competent jurisdiction in order to protect and preserve Landlord' s interest under this Lease, all or any portion of any Demised Premises, the Rent and/or other revenues, earnings, income, products and profits of or from such Demised Premises, in each case pending the outcome of such proceedings, with such powers as such court shall confer.

13.6 Waiver. Upon the occurrence of an Event of Default, Tenant hereby waives, to the extent permitted by applicable law, for itself and all those claiming under it, including Tenant' s creditors, (a) any right of redemption, re-entry or repossession with respect to the Demised Premises or any right to have a continuance of this Lease after any termination of this Lease or of Tenant' s right of possession with respect to all or any portion of such Demised Premises and (b) the benefit of any Legal Requirements now or hereafter in force exempting property from liability for debt or for distress for rent.

13.7 Landlord' s Right to Cure Tenant' s Default. If an Event of Default shall have occurred and be continuing, in addition to and not in limitation of any and all other rights and remedies of Landlord under this Lease, at law or in equity, and without waiving or releasing any Event of Default or any obligation or liability of Tenant hereunder, Landlord may (but shall be under no obligation to) make such payments or perform such acts for the account and at the expense of Tenant, and may enter upon the applicable Demised Premises or any applicable portion thereof for such purposes and take all such other actions at such Demised Premises, in each case as may be necessary or appropriate in Landlord' s sole discretion; provided, however, that neither any such entry or action by Landlord nor any repossession or expulsion of any Person by Landlord from any Demised Premises pursuant to this Article XIII shall constitute an actual or constructive eviction or repossession without, in each case, Landlord' s clear and unambiguous expression in writing of its intention to effect such an eviction. All sums, costs and expenses (including reasonable attorneys' fees and expenses) incurred or paid by Landlord in connection with the foregoing, together with interest thereon at the Default Rate from the date on which such sums or expenses were so paid or incurred until repaid by Tenant, shall be paid by Tenant to Landlord as Additional Rent upon Landlord' s demand therefor. The obligations of Tenant and rights of Landlord set forth in this Article XIII shall survive any EOD Termination or any other expiration or earlier termination of this Lease.

ARTICLE XIV
LANDLORD' S FINANCING

14.1 Landlord' s Financing. Without the consent of Tenant, Landlord may from time to time, directly or indirectly, (a) create or otherwise cause to exist, with respect to any Demised Premises, one or more mortgages, deeds of trust, deeds to secure debt or other similar security

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agreements or security interests (each, a "**Landlord Mortgage**") and/or (b) pledge, collaterally assign or grant a security interest in this Lease, any other Lease Documents, any interest of Landlord therein or any direct or indirect Equity Interests in Landlord (collectively, "**Other Collateral**", and each of the foregoing instruments and documents, together with any Landlord Mortgage, collectively, "**Landlord Financing Documents**"), in each case in favor of any mortgage lender, mezzanine lender or other holder of Indebtedness of Landlord or its Affiliates from time to time (each, a "**Landlord Lender**"). This Lease is, and at all times shall automatically and without any requirement for any further action be, subject and subordinate to the liens of any Landlord Financing Documents that may now or hereafter affect all or any portion of any Demised Premises or this Lease and to all renewals, modifications, consolidations, replacements, restatements and extensions thereof, in each case provided that such Landlord Financing Documents, or a separate subordination, non-disturbance and attornment agreement with such Landlord Lender (an "**SNDA**") in substantially the form and substance of **Exhibit H** attached hereto (the "**Approved SNDA Form**") or otherwise in form and substance reasonably satisfactory to Tenant, expressly provides for the recognition of this Lease and Tenant' s rights hereunder with respect to each individual Property forming the Demised Premises hereunder, unless an Event of Default has occurred and is continuing hereunder with respect to such individual Property. Landlord shall use commercially reasonable efforts to obtain from the holder of any Landlord Mortgage (a "**Landlord Mortgagee**") an SNDA on the Approved SNDA Form or such Landlord Mortgagee' s then customary form (with such changes to such customary form as may be reasonably requested by Tenant). If, in connection with obtaining any Landlord Mortgage with respect to all or any portion of any Demised Premises, any Landlord Mortgagee or prospective Landlord Mortgagee shall request (i) Tenant' s cooperation and/or (ii) Tenant' s execution, acknowledgement and delivery of any reasonable amendments or modifications of or to this Lease, then Tenant shall reasonably cooperate in connection therewith and execute, acknowledge and deliver any such amendments or modifications (as applicable) so long as such amendments or modifications (as applicable) do not, individually or in the aggregate, increase Tenant' s duties, obligations or liabilities, or decrease Tenant' s rights under, this Lease or any Property Documents other than to a de minimis extent. Landlord covenants for the benefit of Tenant that there is no Landlord Mortgage in effect on the date of this Lease.

14.2 Attornment. If (a) Landlord' s interest in all or any portion of any Demised Premises or (b) any Other Collateral is sold, conveyed, transferred or terminated by operation of law or in connection with any exercise and/or enforcement by any Landlord Lender of any of its rights or remedies under any Landlord Financing Documents, at law or in equity (or in lieu of such exercise, including pursuant to a deed or assignment in lieu of foreclosure, and including any exercise of any voting control rights by any Landlord Lender with respect to any direct or indirect Equity Interests in Landlord), then (i) at the request and option of the new owner or other transferee of such Demised Premises or applicable portion thereof or of any such Other Collateral, as the case may be (each, a "**Successor Landlord**"), Tenant shall either (A) if required as a result thereof, immediately attorn to and recognize such Successor Landlord as Tenant' s "landlord" under this Lease and/or (B) promptly following such Successor Landlord' s request, enter into a new lease substantially in the form of this Lease (a "**New Lease**") with such Successor Landlord; provided, however, that (1) such Successor Landlord shall not be liable for the acts of Landlord, except to the extent expressly set forth in the applicable SNDA and (2) the execution of any such New Lease shall not, individually or in the aggregate, increase Tenant' s duties, obligations or liabilities, or decrease Tenant' s rights under, this Lease or any Property Documents.

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14.3 **Compliance with Landlord Financing Documents**. Tenant hereby agrees to cooperate with the reasonable requests of Landlord in order to assist Landlord in complying with its obligations under any Landlord Financing Documents executed by Landlord or any Affiliate of Landlord to the extent the same obligate Landlord and/or its Affiliates to comply (or cause the tenants, subtenants and/or operators of the Demised Premises to comply) with certain covenants, representations and warranties contained therein relating to the reporting required under this Lease, the procurement and maintenance of insurance coverages with respect to the Demised Premises and/or compliance with applicable Legal Requirements. Notwithstanding the foregoing, Tenant' s obligations shall be limited by the terms of this Lease only and in no event shall Tenant be bound by the terms and conditions of such Landlord Financing Documents (or be obligated to comply with the same), and shall be conditioned on Landlord' s agreement to reimburse Tenant for any additional Cost or Expense (i.e., in addition to the obligations of Tenant in this Lease other than pursuant to this Section 14.3) incurred by Tenant to comply with the foregoing. Notwithstanding anything to the contrary in this Lease, Tenant is agreeing to cooperate with Landlord solely as an accommodation to Landlord and Tenant' s failure to comply with any request of Landlord pursuant to the terms of this Section 14.3 shall not be deemed a default under this Lease (provided, however, that the foregoing shall not detract from Tenant' s other obligations under this Lease).

14.4 **Limitation of Successor Landlord Liability**. Notwithstanding anything herein to the contrary, in the event that any Successor Landlord shall acquire all or any portion of any Demised Premises or any Other Collateral, such Successor Landlord shall have no obligation, nor incur any liability, beyond Successor Landlord' s interest, if any, in the Demised Premises, and Tenant shall look exclusively to such interest, if any, of such Successor Landlord in the Demised Premises for the payment and discharge of any obligations imposed upon Successor Landlord under this Lease. Tenant hereby agrees that, with respect to any monetary judgment that may be obtained or secured by Tenant against any Successor Landlord, Tenant shall look solely to the estate or interest owned by Successor Landlord in the Demised Premises (if any), and Tenant shall not collect or attempt to collect any such judgment against any Successor Landlord personally or against any Affiliate, shareholder, member, partner, director or officer thereof personally or out of any other assets or properties of such Successor Landlord or such Affiliate, shareholder, member, partner, director or officer (as applicable). Nothing in this Section 14.4 shall be deemed to imply or create any duties, obligation or liabilities on the part of any Successor Landlord to or in favor of Tenant or with respect to any Demised Premises or any portion thereof or interest therein.

14.5 **Landlord Lenders as Third Party Beneficiaries**. Each Landlord Lender shall be an express and intended third party beneficiary of the terms and provisions of this Article XIV and of any other term or provision in this Lease expressly requiring the approval or consent of such Landlord Lender and shall have the right to enforce all such terms and provisions against Tenant.

14.6 **Right of Landlord Lender to Enforce Lease**. Tenant hereby agrees that, to the extent a Landlord Lender is expressly permitted to do so under the Landlord Financing Documents and a minimum of ten (10) days' prior Notice thereof shall have been given to Tenant by Landlord or Landlord Lender, such Landlord Lender may exercise any self-help remedies of Landlord under this Lease (subject to the applicable terms and provisions hereof) on behalf of Landlord.

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14.7 **Cure of Landlord Defaults**. Subject to the provisions of any applicable SNDA, no default by Landlord of its obligations under this Lease shall be deemed to exist so long as any applicable Landlord Lender, in good faith, (a) has received Notice from Tenant of such default, (b) shall have commenced promptly to cure the default in question, and prosecutes such cure to completion with reasonable diligence and continuity, or (c) shall have, if possession of any applicable Demised Premises is required to cure the default in question, either (i) entered into possession of such Demised Premises with the permission of Tenant for such purpose or (ii) notified Tenant of its intention to institute enforcement proceedings under any applicable Landlord Financing Documents to obtain possession of Landlord' s interest in such Demised Premises or of any applicable Other Collateral, directly or through a receiver, and so long as such Landlord Lender thereafter prosecutes such proceedings with reasonable diligence and continuity; provided, however, that the foregoing grant of such additional cure time for the benefit of a Landlord Lender shall not, as between Landlord and Tenant (A) prevent or hinder Tenant from exercising any other remedy (e.g., self-help), or (B) relieve Landlord of any liability or obligation.

ARTICLE XV
INDEMNIFICATION

15.1 **Indemnification**.

(a) Tenant shall pay, protect, indemnify, save and hold harmless and defend Landlord (in Landlord' s capacity as the owner and lessor of the Demised Premises) and all other Landlord Indemnified Parties from and against all liabilities, obligations, claims, losses, damages, penalties, causes of action, suits, demands, judgments, and Costs and Expenses (including any of the foregoing that may be incurred in the enforcement of this Article XV) (collectively, "**Claims**"), in each case, of any nature whatsoever, howsoever caused, and arising from and after the Commencement Date and during the Term out of or in connection with any of the following, but in each case specifically excluding (x) any Claims related to the Excluded Land or the Separation Actions (except to the extent such Claims arise out of the gross negligence or willful misconduct of any Tenant Indemnified Party), (y) any Claims to the extent that such Claims arise out of the gross negligence or willful misconduct of any Landlord Indemnified Party or to the extent such Claims are Landlord Indemnified Matters and (z) any indirect, speculative or consequential damages from whatever cause (except to the extent any such damages are actually suffered or incurred by a Landlord Indemnified Party in connection with a claim brought by a third party in a legal action or proceeding against such Landlord Indemnified Party) (collectively, together with any other matters as to which Tenant or any Lease Guarantor is required under any Lease Documents to which it is party to pay or protect, indemnify, save and hold harmless and/or defend Landlord or any Landlord Indemnified Parties, collectively, the "**Tenant Indemnified Matters**"): (i) any accident, injury to or death of persons or loss of or damage to property occurring on or about any Demised Premises, including any claims made by any of Tenant' s Related Users, (ii) any matter pertaining to the ownership, leasing, use, misuse, non-use, occupancy, operation, management, condition, design, construction, maintenance, repair, restoration or Alterations (each, a "**Use**") of or to any Demised Premises or Tenant' s Property

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(except to the extent that Landlord performs any such leasing, operation, management, design, construction, maintenance, repair, restoration or Alterations pursuant to the terms of this Lease or otherwise), (iii) any violation by Tenant or any such other Person claiming by, through or under Tenant of any of the terms or provisions of this Lease or any Property Requirements or (iv) any contest by Tenant of any Legal Requirement or Insurance Requirement.

(b) Landlord shall pay, protect, indemnify, save and hold harmless and defend Tenant and all other Tenant Indemnified Parties from and against all Claims, in each case, of any nature whatsoever, howsoever caused, and arising from out of or in connection with any of the following, but in each case specifically excluding (x) any Claims to the extent that such Claims arise out of the gross negligence or willful misconduct of any Tenant Indemnified Party or to the extent such Claims are Tenant Indemnified Matters and (y) any indirect, speculative or consequential damages from whatever cause (except to the extent any such damages are actually suffered or incurred by a Tenant Indemnified Party in connection with a claim brought by a third party in a legal action or proceeding against such Tenant Indemnified Party) (collectively, the "**Landlord Indemnified Matters**"): (i) the gross negligence or willful misconduct of Landlord arising in connection with this Lease, (ii) Landlord' s Pre-Existing Environmental Obligations and (iii) any of the following: (A) to the extent the Excluded Land is used or occupied by Landlord or any of its Related Users, any accident, injury to or death of persons or loss of or damage to property occurring on such Excluded Land, including any claims made by any of Landlord' s Related Users, or (B) any violation by Landlord or any Person claiming by, through or under Landlord, of any of the Property Requirements that apply to the Excluded Land.

(c) Any amounts that become payable by Tenant or Landlord (each, as applicable, an "**Indemnifying Party**") under this Section 15.1 shall bear interest at the Default Rate from and after the date that is five (5) Business Days following the date of the applicable Indemnified Party' s demand therefor through and including the date of such Indemnifying Party' s payment thereof. The Indemnifying Party shall, at its sole cost and expense, contest, resist and defend any Claim asserted or instituted against any Indemnified Party by reason of any of the Tenant Indemnified Matters or the Landlord Indemnified Matters, as applicable. If any Indemnified Party receives written notice of any Claim, such Indemnified Party shall give the applicable Indemnifying Party prompt written notice of such Claim; provided, however, that (A) such Indemnified Party shall have no liability for an inadvertent failure to give notice to the Indemnifying Party of any such Claim and (B) the inadvertent failure of such Indemnified Party to give such notice to the Indemnifying Party shall not limit the rights of such Indemnified Party or the obligations of the Indemnifying Party with respect to such Claim, provided that the Indemnifying Party shall have no obligation to indemnify or defend any Claim (or pay interest on any sums expended by such Indemnified Party) until the Indemnifying Party receives actual Notice thereof. The Indemnifying Party shall have the right to control the defense or settlement of any Claim; provided, however, that (1) if the compromise or settlement of any such Claim shall not result in the complete release of the applicable Indemnified Party therefrom, then such compromise or settlement shall require the prior written approval of such Indemnified Party (not to be unreasonably withheld, conditioned or delayed) and (2) no such compromise or settlement shall include any admission of wrongdoing on the part of such Indemnified Party; provided, further, that any Indemnified Party shall have the right to reasonably approve counsel engaged to

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defend any Claim by the Indemnifying Party (except to the extent such counsel shall be appointed by the Indemnifying Party' s insurer) and, at such Indemnified Party' s election, shall have the right (at its own cost), but not the obligation, to participate in the defense of any Claim with counsel of its choice. Notwithstanding the foregoing, (x) the Indemnified Party may employ counsel of its choice to monitor the Indemnifying Party' s contest, resistance and/or defense (as applicable) of any such Claim, the cost of which shall be paid by such Indemnified Party and (y) if any Event of Default has occurred and is continuing, Landlord shall have the right to control the defense and settlement of any applicable Claim, with counsel of Landlord' s choice and at Tenant' s sole cost and expense.

(d) Except as otherwise provided in Section 15.1(b), Tenant hereby expressly releases Landlord and all other Landlord Indemnified Parties from, and waives all claims for, damage or injury to persons, theft, loss of use of or damage to property and loss of business sustained by Tenant or any of its Affiliates or Related Users that may result from any Demised Premises and/or any Tenant' s Property or any equipment in connection therewith becoming in disrepair, or that results from any damage, accident or event in or about any Demised Premises. Without limiting the generality of the foregoing, the foregoing release shall apply particularly, but not exclusively, to any flooding, damage caused by any building equipment and/or apparatus, water, snow, frost, steam, excessive heat or cold, broken glass, sewage, gas, odors, excessive noise or vibration, death, loss, conversion, theft, robbery, or the bursting or leaking of pipes, plumbing fixtures or sprinkler devices; provided, however, that such release shall not (i) apply to any Claims to the extent such Claims arise out of the gross negligence or willful misconduct of Landlord or (ii) apply to the Landlord' s Pre-Existing Environmental Obligations.

(e) The Parties' respective obligations under this Article XV shall survive any termination of this Lease.

ARTICLE XVI
NO MERGER

16.1 **No Merger**. There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate and (b) the fee estate in the Demised Premises or any interest therein.

ARTICLE XVII
CONVEYANCE BY LANDLORD

17.1 **Conveyance by Landlord**. Without limiting any terms or provisions of this Lease with respect to any Successor Landlord, if Landlord or any successor owner of the Demised Premises shall sell, convey or otherwise transfer all or any portion of any Demised Premises, other than merely as security for Indebtedness (a "**Property Sale**"), and the purchaser or other applicable transferee expressly assumes all obligations of Landlord arising from and after the date of such Property Sale, then Landlord or such successor owner, as the case may be, shall thereupon be absolutely and unconditionally released from all duties, obligations and liabilities under this Lease first arising or accruing from and after the date of such Property Sale and all such future liabilities

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and obligations shall thereupon be binding upon such purchaser, grantee or other transferee, as the case may be. Except as may be otherwise expressly set forth herein, any Property Sale shall be subject to Tenant' s ROFO Right and the provisions set forth on Schedule 17.1 shall apply with respect to such Property Sale.

ARTICLE XVIII
QUIET ENJOYMENT

18.1 **Quiet Enjoyment**. So long as no Event of Default has occurred and is continuing, Tenant shall peaceably and quietly have, hold and enjoy the Demised Premises for the Term, free of any claim or other action by Landlord or any Person claiming by, through or under Landlord, in each case except for (but subject to the provisions hereof pertaining to) all Encumbrances. No failure by Landlord to comply with the foregoing covenant shall give Tenant any right to cancel or terminate this Lease or to exercise any Set-Off Rights. Notwithstanding the foregoing, Tenant shall have the right, by separate and independent action, to pursue any claim that it may have against Landlord as a result of a breach by Landlord of the covenant of quiet enjoyment contained in this Section 18.1, subject to Section 20.3.

ARTICLE XIX
NOTICES

19.1 **Notices**. Any notice, request or other communication required or desired to be given by any party hereunder shall be in writing and shall be sent by registered or certified mail, postage prepaid and return receipt requested, by hand delivery or express or overnight courier service, or by email transmission, to the following address and/or email address:

Prior to the PropCo Closing Date:

To Tenant: Penney Tenant II LLC
c/o Penney Intermediate Holdings LLC
P.O. Box 10001
Dallas, Texas 75301-4106
Attention: Real Estate Counsel
Email: btreadwa@jcp.com

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With a copy to:	Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, New York 10019 Attention: Salvatore Gogliormella, Esq. Email: sgogliormella@paulweiss.com
To Landlord:	J.C. Penney Corporation, Inc. 6501 Legacy Drive Plano, Texas 75024 Attention: Brandy Treadway Email: btreadwa@jcp.com
	J.C. Penney Properties, LLC 6501 Legacy Drive Plano, Texas 75024 Attention: Brandy Treadway Email: btreadwa@jcp.com
With copies to:	Milbank LLP 55 Hudson Yards New York, New York 10001 Attention: Kevin O' Shea, Esq. Email: koshea@milbank.com RENotice@milbank.com
and:	Kirkland & Ellis LLP 601 Lexington Avenue New York, New York 10022 Attention: Joshua A. Sussberg Aparna Yenamandra John Goldman Stephen G. Tomlinson Email: jsussberg@kirkland.com aparna.yenamandra@kirkland.com john.goldman@kirkland.com stomlinson@kirkland.com

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From and after the PropCo Closing Date:

To Tenant:	At the notice address set forth above for Tenant
With a copy to:	Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, New York 10019 Attention: Salvatore Gogliormella, Esq. Email: sgogliormella@paulweiss.com
To Landlord:	GLAS Trust Company LLC c/o GLAS USA LLC GLAS AMERICAS LLC 3 Second Street, Suite 206 Jersey City, New Jersey 07311 Attention: Client Services Email: ClientServices.americas@glas.agency
With copies to:	Milbank LLP 55 Hudson Yards New York, New York 10001 Attention: Kevin O' Shea, Esq. Email: koshea@milbank.com RENotice@milbank.com
and:	Hilco JCP, LLC c/o Hilco Real Estate, LLC 5 Revere Drive, Suite 206 Northbrook, Illinois 60062 Attention: Greg Apter and Neil Aaronson Email: gapter@hilcoglobal.com; naaronson@hilcoglobal.com

or to such other address and/or email address as either Party may hereafter designate upon Notice to the other Party. Notice given in accordance with this Section 19.1 shall be deemed to have been given (a) if by hand or by express or overnight courier service, on the date of personal delivery, if such delivery is made on a Business Day, or if not, on the first (1st) Business Day after such delivery; if such delivery is refused, Notice shall be deemed to have been given on the date such delivery was first attempted; (b) if by mail, on the third (3rd) Business Day after mailing thereof; and (c) if by email transmission, upon delivery with receipt acknowledged by the recipient thereof.

ARTICLE XX
MISCELLANEOUS

20.1 **Survival**. Notwithstanding anything to the contrary contained in this Lease, all Surviving Obligations shall survive any expiration or earlier termination of this Lease.

20.2 **Partial Invalidity**. If any provision, term, covenant or condition of this Lease or the application thereof to any Person or circumstance shall, to any extent, be determined by a court

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of competent jurisdiction or any arbitrator to be invalid or unenforceable, the remainder of this Lease, or the application of such provision, term, covenant or condition to Persons or circumstances other than those as to which it is determined to be invalid or unenforceable, shall not be affected thereby, and each provision, term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

20.3 Non-Recourse. Tenant hereby agrees to look solely to the interest of Landlord in the Demised Premises as it exists from time to time for the satisfaction of any claim or liability of Landlord under this Lease, and Tenant shall not institute any action or proceeding against, nor seek to recover any judgment from, Landlord personally or any other property of Landlord, and Landlord' s liability hereunder shall be limited solely to its interest in the Demised Premises as it exists from time to time, and Tenant shall have no recourse under or in respect of this Lease against any other assets of Landlord or against any of Landlord' s Affiliates or any other Person having an interest in Landlord or any such Person' s assets whatsoever. Subject to the terms of Section 3.5, the interest of Landlord in and to the Demised Premises shall include, without limitation, the rents, income, receipts, revenues, issues and profits issuing from the applicable portion of the Demised Premises, any proceeds of sale, any proceeds from insurance policies and any Award. Without limiting the foregoing, Tenant hereby agrees that neither any constituent partner, member or shareholder or owner of any direct or indirect legal, beneficial or equitable interest in Landlord nor any manager, managing member, director, officer or employee of Landlord or any such Person shall ever be personally liable for, nor shall any personal assets of any such Person ever be subject to, any such claim, liability or judgment or for the payment of any monetary obligation to Tenant. Furthermore, except as otherwise expressly provided herein, (a) in no event shall Landlord ever be liable to Tenant for any damages with respect to or arising out of any Consent Dispute, except to the extent that an arbitrator determines in a final, non-appealable judgment (including pursuant to Section 27.1(h)) that Landlord acted in bad faith in withholding its consent in violation of the applicable terms and provisions of this Lease in connection with the subject matter of such Consent Dispute and (b) in no event shall Landlord ever be liable to Tenant, nor shall Tenant ever be liable to Landlord, for any indirect, speculative or consequential damages (including, without limitation, damages with respect to any lost profits), from whatever cause, except to the extent any such damages are actually suffered or incurred by Tenant or Landlord (as applicable) in connection with any claim brought by a third party in a legal action or proceeding against such Party.

20.4 Successors and Assigns. This Lease shall be binding upon Landlord and its successors and assigns, and upon Tenant and its permitted successors and assigns pursuant to Article IX.

20.5 Governing Law. THIS LEASE WAS NEGOTIATED IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL JURISDICTIONAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTIONS EMBODIED HEREBY. ACCORDINGLY, IN ALL RESPECTS THIS DISTRIBUTION CENTER MASTER LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT ALL PROVISIONS HEREOF RELATING TO THE CREATION OF THE LEASEHOLD ESTATE

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AND ALL REMEDIES SET FORTH IN ARTICLE XIII RELATING TO RECOVERY OF POSSESSION OF ANY DEMISED PREMISES (SUCH AS AN ACTION FOR UNLAWFUL DETAINER, *IN REM* ACTION OR OTHER SIMILAR ACTION) (COLLECTIVELY, "**LOCAL REMEDIES**"), SHALL BE CONSTRUED AND ENFORCED ACCORDING TO, AND GOVERNED BY, THE LAWS OF THE STATE OF SUCH DEMISED PREMISES.

20.6 Consent to Jurisdiction; Waiver of Trial by Jury. EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE CITY AND STATE OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS LEASE (INCLUDING ANY BREACH OF THE TERMS OR PROVISIONS HEREOF BUT SUBJECT TO THE PROVISO TO THIS PARAGRAPH) OR ANY TRANSACTION CONTEMPLATED HEREBY, AND AGREES TO COMMENCE ANY SUCH ACTION, SUIT OR PROCEEDING ONLY IN SUCH COURTS; PROVIDED, HOWEVER, THAT UPON THE OCCURRENCE OF AN EVENT OF DEFAULT WITH RESPECT TO A PARTICULAR PROPERTY, LANDLORD SHALL HAVE THE RIGHT TO ENFORCE ITS LOCAL REMEDIES IN, AND TENANT IRREVOCABLY SUBMITS TO THE JURISDICTION OF, ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE IN WHICH SUCH PROPERTY IS LOCATED. EACH PARTY FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY UNITED STATES REGISTERED MAIL TO SUCH PARTY' S RESPECTIVE ADDRESSES SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUCH ACTION, SUIT OR PROCEEDING. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY IN SUCH COURTS, AND HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH PARTY ACKNOWLEDGES THAT IT HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO A TRIAL BY JURY UNDER THE CONSTITUTION OF THE UNITED STATES AND EACH APPLICABLE STATE. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS LEASE OR ANY OTHER LEASE DOCUMENT OR (B) IN ANY MANNER CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF LANDLORD AND TENANT WITH RESPECT TO THIS LEASE OR ANY OTHER LEASE DOCUMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY, AND THAT EITHER PARTY MAY FILE A COPY OF THIS SECTION 20.6 WITH ANY COURT AS CONCLUSIVE EVIDENCE OF THE CONSENT OF THE OTHER PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY HEREUNDER.

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20.7 Entire Agreement. This Lease, the Exhibits and the Schedules hereto constitute the entire and final agreement of the Parties with respect to the subject matter hereof, and may not be amended or modified except by an agreement in writing signed by the Parties. Landlord and Tenant hereby agree that all prior or contemporaneous oral or written understandings, agreements or negotiations between the Parties relative to the leasing of the Demised Premises or the execution of this Lease are merged and integrated into, and revoked and superseded, by this Lease.

20.8 Headings. All titles and headings to sections, subsections, paragraphs or other divisions of this Lease are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other contents of such sections, subsections, paragraphs or other divisions, such other content being controlling as to the agreement among the Parties.

20.9 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

20.10 Interpretation. Each of Landlord and Tenant has been represented by counsel and this Lease and every term and provision hereof have been freely and fairly negotiated. Consequently, no provisions of this Lease shall be construed against any Party because such Party prepared this Lease or any earlier draft hereof. In the event that the date on which Landlord or Tenant is required to take any action under the terms of this Lease is not a Business Day, the applicable action shall be taken on the next succeeding Business Day.

20.11 Time of Essence. TIME IS OF THE ESSENCE WITH RESPECT TO:

(a) THE REQUIREMENT FOR TENANT TO DELIVER A SEVERED LEASE AND SEVERED LEASE ANCILLARY DOCUMENTS BY THE LEASE SEVERANCE DEADLINES PURSUANT TO SECTION 1.9; PROVIDED THAT THE FOREGOING SHALL NOT LIMIT THE APPLICABLE NOTICE AND CURE PERIOD SET FORTH IN SECTION 13.1(l);

(b) THE EXERCISE BY TENANT OF TENANT' S ROFO RIGHT PURSUANT TO SECTION 17.1 AND SCHEDULE 17.1, AND, UPON ANY SUCH EXERCISE, THE COMPLIANCE BY TENANT WITH ALL TIME FRAMES SET FORTH IN SCHEDULE 17.1 RELATING THERETO;

(c) THE EXERCISE BY TENANT OF TENANT' S RENEWAL OPTION PURSUANT TO SECTION 1.3; AND

(d) THE TIME FRAMES SET FORTH IN ARTICLE XIII FOR THE PERFORMANCE BY TENANT OF ITS OBLIGATIONS UNDER THIS LEASE PRIOR TO THE OCCURRENCE OF AN EVENT OF DEFAULT.

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20.12 **Further Assurances**. Each Party agrees to execute, acknowledge and deliver to the other Party and/or such other Persons as such Party may request, all documents reasonably requested by such Party to give effect to the provisions and intent of this Lease.

20.13 **Acceptance of Surrender**. Notwithstanding anything to the contrary in this Lease, no surrender by Tenant to Landlord of all or any portion of any Demised Premises shall be valid or effective unless and until Landlord has (in writing) agreed to and accepted such surrender in Landlord' s sole discretion (except to the extent otherwise expressly set forth in this Lease), and no act by Landlord or any representative or agent of Landlord, other than such a written agreement and acceptance by Landlord, shall constitute an agreement to or acceptance of any such surrender.

20.14 **Non-Waiver**. The failure of Landlord to insist, in any one or more instances, upon a strict performance of any of the covenants, conditions, terms or provisions of this Lease, or to exercise any election, option, right or remedy herein contained (collectively, "**Lease Provisions**"), shall not be construed as a waiver or a relinquishment of such Lease Provisions or as a waiver or a relinquishment for the future of any of the same or any other Lease Provisions, Tenant hereby acknowledging and agreeing that all Lease Provisions shall thereafter continue and remain in full force and effect. Neither the receipt by Landlord of any Rent nor the payment of any Rent by Tenant, whether or not Landlord has knowledge of Tenant' s breach of any Lease Provisions, shall be deemed to be or construed as a waiver of such breach. No waiver by Landlord of any Lease Provisions shall be deemed or construed to have been made unless expressed in writing and signed by Landlord.

20.15 **Accord and Satisfaction**. Without limiting the foregoing provisions of Section 20.14, no payment by Tenant or receipt by Landlord of an amount less than the full amount of the Rent shall be deemed to be other than on account of the earliest stipulated or required payments of Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or confirmation of any wire transfer or ACH or other payment as Rent be deemed to be or construed as an accord and satisfaction, and Landlord may accept such check, wire transfer, ACH or other payment without prejudice to Landlord' s right to recover the balance of such Rent (with late charges and interest as provided herein) or exercise and/or enforce any other right or remedy under this Lease, at law or in equity.

20.16 **No Recording of this Lease; Memoranda of Lease**.

(a) Neither Party shall record this Lease without the written consent of the other Party in its sole discretion.

(b) Promptly upon either Party' s request, the other Party shall execute, deliver and record, file or register such instruments and other documents as may be required or permitted under applicable Legal Requirements in order to evidence the respective interests of Landlord and Tenant in all or any portion of any Demised Premises (including a memorandum of this Lease and/or a memorandum memorializing any amendment or supplement hereto or thereto or any removal or substitution of any Demised Premises in accordance with the terms and provisions hereof).

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20.17 Liens. Without limiting Tenant' s right to conduct any Work (including, without limitation, any Alterations) in accordance with (and subject to) the express provisions of this Lease, Tenant shall not (and shall have no power to) commit any act or enter into any agreement that may create or be the foundation for any lien, mortgage or other encumbrance upon Landlord' s right, title and interest in and to any Demised Premises or Property, or upon or in the Leased Improvements or other buildings or improvements now or hereafter located thereon, it being agreed that if Tenant performs (or causes to be performed) any Work or makes (or causes to be made) any Alterations or repairs with respect to any Demised Premises, or causes any material to be furnished or labor to be performed therein or thereon, then in each case neither Landlord nor such Demised Premises, Property or buildings or improvements shall under any circumstances be liable for the payment of any cost or expense thereof or incurred in connection therewith. Without limiting the requirement for Landlord' s consent thereto to the extent such consent is required under the applicable provisions of this Lease, all such repairs, Alterations and other Work shall be made, and all such materials and labor shall be furnished and performed, at Tenant' s sole cost and expense and Tenant shall be solely and wholly responsible to all applicable contractors, laborers and materialmen furnishing, making and/or performing the same, all of which contractors, laborers and materialmen are hereby charged with notice that they must look solely and wholly to Tenant and Tenant' s interest in the Demised Premises to secure the payment of any bills for any of the foregoing. In addition to all other rights and remedies of Landlord under this Lease, and subject to the provisions of Section 4.2, in the event that any mechanic' s or materialman' s lien shall be filed against all or any portion of any Demised Premises or Tenant' s interest therein or (to the extent the same results from any Tenant' s Acts) any other portion of any Property, then in each case, except to the extent the same results from any act or wrongful failure to act of Landlord or any Landlord Indemnified Party, Tenant shall promptly discharge such lien whether by payment of the indebtedness due, by filing a bond (as provided by statute) or by providing a surety bond, in each case, for one hundred ten percent (110%) of the amount of such lien as security therefor (each such action, a "**Bond**"). In the event that Tenant shall fail to Bond any such lien, Landlord may, but shall not be obligated to, in addition to all other rights and remedies of Landlord under this Lease, at law or in equity, Bond such lien on Tenant' s behalf and Tenant shall thereafter immediately pay to Landlord, as Additional Rent, all Costs and Expenses incurred by Landlord in connection therewith (together with interest thereon (or on the portion not theretofore reimbursed, as applicable) at the Default Rate until paid by Tenant in full).

20.18 Cumulative Remedies. Each and every one of the rights, remedies and benefits of Landlord under this Lease shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits of Landlord hereunder, at law or in equity.

20.19 Confidentiality; Press Releases. Each Party hereby agrees not to disclose any of the terms or provisions of this Lease or any other Lease Document to any Person that is not a Party and not to, without the other Party' s prior written consent (which shall not be unreasonably withheld, conditioned or delayed), issue any press or other media releases or make any public statements relating to the terms or provisions of this Lease; provided, however, that either Party may make necessary disclosures to its employees, officers, partners, shareholders, members, directors, managers and representatives and to existing and potential lenders, rating agencies, investors, purchasers, subtenants, assignees, attorneys, advisors, consultants, accountants and

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Governmental Authorities and/or such disclosures as may be required pursuant to any applicable Legal Requirements or court orders, so long as each such Person agrees to keep all of the terms of this Lease strictly confidential to the maximum extent practicable (except, for the avoidance of doubt, to the extent disclosure may be otherwise required pursuant to such Legal Requirements or court orders).

20.20 Authority. Each Party hereby represents and warrants to each other Party that the Person(s) executing this Lease on behalf of such Party have been duly authorized by all requisite corporate or other action of such Party, as the case may be, so that this Lease shall be binding upon and enforceable against such Party in accordance with its terms, except as the same may be limited by general equitable principles or the effect of any Bankruptcy Laws. Each Party hereby agrees to furnish to the other Party, from time to time upon such other Party' s request, such written proof of such authorization as such Party may reasonably request.

20.21 Books and Records; Reporting; Management Meetings.

(a) Tenant shall (i) keep adequate records and books of account with respect to the finances and business of Tenant generally in accordance with GAAP (it being agreed that Property-level records will not be kept in accordance with GAAP and that reporting of EBITDA are non-GAAP measures), (ii) subject to the execution and delivery of a non-disclosure agreement on the Approved NDA Form covering Tenant Confidential Information, permit Landlord and any Landlord Lender by their respective agents, accountants and attorneys, upon reasonable advance Notice to Tenant, to visit Tenant' s central office to examine (and make copies of) such records and books of account at such reasonable times as may be requested by Landlord (provided, however, that absent an Event of Default, the foregoing right shall not be exercised more than twice per calendar year) (it being agreed that the provisions of this clause (ii) shall not apply in any Severed Lease), and/or (iii) subject to the execution and delivery of a non-disclosure agreement on the Approved NDA Form, upon Landlord' s request, provide Landlord with copies of any of the foregoing information to which Landlord would be entitled in the course of any such personal visit. Notwithstanding anything to the contrary in the foregoing, on such dates and at such times as the Parties shall reasonably agree from time to time, but not less frequently than twice per calendar year, Tenant shall cause a Financial Officer of Tenant' s Parent and such other senior officers and management personnel of the Tenant Parties as Landlord may reasonably request (and subject to such personnel' s availability), to meet with representatives of Landlord (either in person or by videoconference) to discuss in reasonable detail the finances and business operations of the Tenant Parties with respect to the Properties (it being agreed that the foregoing requirement shall not apply in any Severed Lease) (the foregoing, Landlord' s "**Management Meeting Rights**").

(b) (i) Within ninety (90) days (or, in the case of the Fiscal Year ending on January 30, 2021, one hundred twenty (120) days) after the end of each Fiscal Year, commencing with the Fiscal Year ending on January 30, 2021, Tenant shall deliver to Landlord the Annual Financial Statements with respect to such Fiscal Year and (ii) within forty-five (45) days (or, in the case of the first two fiscal quarters ending after the Commencement Date, sixty (60) days) after the end of each fiscal quarter (except for the last fiscal quarter of each Fiscal Year), commencing with the fiscal quarter ending in April 2021, Tenant shall deliver to Landlord the

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Quarterly Financial Statements for such fiscal quarter. All such Annual Financial Statements and Quarterly Financial Statements shall be prepared in accordance with the form and content requirements required pursuant to the ' 33 Act or the ' 34 Act and the rules and regulations of the Securities and Exchange Commission (the "**SEC**") thereunder to the extent that Landlord or its direct or indirect parent is required to file or furnish them with the SEC in accordance with the rules and regulations under the ' 33 Act or the ' 34 Act. All such Annual Financial Statements shall be accompanied by an opinion of the applicable Acceptable Accounting Firm stating that (A) there are no qualifications as to the scope of its audit of such Annual Financial Statements and (B) that such audit was performed in accordance with GAAP. In addition, all such Quarterly Financial Statements and Annual Financial Statements shall be accompanied by a certification executed by a Financial Officer of Tenant' s Parent stating that, as of the applicable date, the Lease Guarantors are in compliance with the Guarantor Financial Covenants (except as otherwise specified therein), and otherwise in the form of Exhibit C attached hereto (a "**Covenant Compliance Certification**"). Notwithstanding the foregoing, during any time that Tenant' s Parent is a public reporting company and timely files with "the SEC (and promptly thereafter provides Landlord with copies of), for the applicable reporting periods, its Form 10-K, Form 10-Q and other required filings under the ' 34 Act, and any other applicable Legal Requirements, the foregoing requirements solely with respect to Tenant' s delivery of Annual Financial Statements and Quarterly Financial Statements shall be waived; provided, however, that Tenant shall (notwithstanding such waiver) continue to deliver Covenant Compliance Certifications to Landlord as and when the same would otherwise be required pursuant to the immediately preceding sentence.

(c) Tenant shall further deliver to Landlord the following additional financial information, in each case, in the form and requiring the information set forth on Schedule 20.21-A (the "**Reporting Package**"):

(i) within sixty (60) days following the end of each Fiscal Year, all financial information which is to be provided annually pursuant to the Reporting Package; and

(ii) within forty-five (45) days following the end of each fiscal quarter, all financial information which is to be provided quarterly pursuant to the Reporting Package.

(d) Tenant shall further deliver to Landlord the following additional information:

(i) Within sixty (60) days following the end of each Fiscal Year, a detailed trailing 12-month schedule of Operating Expenses with respect to each Property (but solely to the extent such Operating Expenses relate to or are incurred in connection with the ownership and/or operation of the real estate at such Property and not, for the avoidance of doubt, the operation of Tenant' s business operations at such Property), which in each case shall (A) be delivered in Microsoft Excel format and otherwise be consistent with past practice, (B) set forth in comparative form the respective figures for the corresponding period or periods of the previous Fiscal Year and (C) be certified by a Financial Officer of Tenant pursuant to an Officer' s Certificate;

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(ii) prompt Notice (after the Financial Officer or other executive officer of Tenant or Tenant' s Parent obtains actual knowledge of the same) of (A) any material adverse change in the financial condition of the Properties, taken as a whole, (B) any default by Tenant or any of its Affiliates or Related Users under a Property Document that could result in the termination of such Property Document or receipt of written notice from a counterparty as to the termination of such Property Document, and/or and (C) any termination or cancellation of any insurance that Tenant is required to obtain and maintain hereunder;

(iii) within forty-five (45) days following the end of each fiscal quarter of each Fiscal Year, the Permitted Sublease Reports required pursuant to Section 9.2; and

(iv) as promptly as reasonably practicable, all such other financial statements and other financial information as Landlord may reasonably request, including to enable Landlord to comply with all voluntary and mandatory financial reporting obligations of Landlord under all applicable Legal Requirements and/or under any Landlord Financing Documents, provided, however, that (A) Landlord reimburses Tenant for any additional cost or expense incurred by Tenant to comply with the foregoing, (B) such financial statements and financial information can be produced without material burden to Tenant (it being agreed that Tenant shall not be required to change in any material respect any of its accounting systems or practices in order to provide such other financial statements or other financial information), (C) to the extent that any information or financial statements requested by Landlord under this clause (iv) relates to any pending or prospective Property Sale, to Landlord' s compliance with any applicable Legal Requirements or to any applicable Landlord Financing Documents, Tenant shall have the burden of proof with respect to any dispute by Tenant that such request is unreasonable and (D) to the extent that any information or financial statements requested by Landlord under this clause (iv) relates to any matter not described in the foregoing subclause (C), Landlord shall have the burden of proof with respect to any dispute by Tenant that such request is unreasonable. Any dispute over the reasonableness of a request for information under this clause (iv) shall be resolved pursuant to the binding arbitration provisions of Section 27.1.

(e) Landlord shall keep all financial information delivered by the Tenant Parties to Landlord that the Tenant Parties determine is commercially sensitive non-public information (including, without limitation, any information contained in the Required Capex Plans and information that can compromise Tenant' s ability to negotiate with vendors, suppliers and other third parties with whom Tenant has or might have a business relationship, including, for the avoidance of doubt, the information contained in the Covenant Compliance Certifications, the Permitted Sublease Reports and the information required to be disclosed pursuant to clauses (i)-(ii) and (iv) of Section 20.21(d) (except, in each case, to the extent that any such information is disclosed as a part of the Financial Statements or the Reporting Package)) (collectively, "**Tenant Confidential Information**") strictly confidential and Landlord shall not share or

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disclose such Tenant Confidential Information except, in each case: (i) to the Trust, Trustee, Trust Certificateholders, prospective purchasers of Trust Certificates and to any officers, directors, members, Affiliates, employees, agents and representatives of the foregoing or of Landlord, provided, in each case, that each such Person or Persons agree in writing to be bound by the provisions of this Section 20.21(e) and (except with respect to the Trust Certificateholders or prospective purchasers of Trust Certificates) executes a non-disclosure agreement in substantially the form attached hereto as **Exhibit D** (the "**Approved NDA Form**"); (ii) to Landlord' s, the Trust' s, Trustee' s, Trust Certificateholders' or any of its or their Affiliates' agents, accountants, auditors, attorneys, financial advisors, managers and existing or prospective lenders, investors or purchasers, or to any rating agency or the attorneys, consultants or advisors to any lender, rating agency, trustee, underwriter or the holders of any bonds or pass-through certificates, in each case, in connection with any securitization and/or sale of any Indebtedness evidenced by any Landlord Financing Documents, provided, in each case, that each such Person or Persons agree in writing to be bound by the provisions of this Section 20.21(e) and (except in the case of a rating agency or the Trust Certificateholders or prospective purchasers of Trust Certificates) executes a non-disclosure agreement in substantially the form of the Approved NDA Form; (iii) to the extent that any Tenant Party has made such information public; (iv) to the extent that Landlord is required pursuant to any Legal Requirement, court order or other legal process to share or disclose such Tenant Confidential Information (provided, however, that Landlord shall provide the applicable Tenant Party with Notice of and an opportunity to limit or contest (in full compliance with all applicable Legal Requirements) any such legally-compelled disclosure (other than any required disclosure pursuant to the federal securities laws (including, without limitation, the ' 34 Act or the ' 33 Act)); or (v) to the extent that the Trustee is required to disclose such Tenant Confidential Information pursuant to the federal securities laws (including, without limitation, the ' 34 Act or the ' 33 Act); provided, however, that Tenant hereby acknowledges and agrees, on its behalf and on behalf of the other Tenant Parties, that in no event shall any of the following (or the information contained therein) constitute Tenant Confidential Information: (A) the Financial Statements and (B) the Reporting Package. For the avoidance of doubt, nothing in this Lease shall limit Landlord' s or any of its Affiliates' right to file, furnish or disclose any information received under this Section 20.21 as required pursuant to any federal securities laws (including, without limitation, the ' 34 Act or the ' 33 Act). Tenant shall cause the Acceptable Accounting Firm conducting each audit of Tenant' s Parent' s Annual Financial Statements to consent in writing to the Trustee' s inclusion of such audit and any report prepared by such Acceptable Accounting Firm in connection therewith in any filings made by the Trustee on behalf of the Trust pursuant to the ' 34 Act or the ' 33 Act. Notwithstanding anything to the contrary herein, no Tenant Party shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (x) constitutes non-financial trade secrets or non-financial proprietary information (subject to the provisos in clause (iv) and clause (v) of this Section 20.21(e) and specifically excluding the Financial Statements, the Reporting Package and the financial statements, certifications and/or other information described in clause (i) through clause (iii) of Section 20.21(d) of this Lease), (y) in respect of which disclosure to Landlord (or its representatives or contractors) is prohibited by law or (z) is subject to attorney-client or similar privilege or constitutes attorney work product.

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20.22 **CPI Adjustment**. Solely with respect to specified dollar baskets and thresholds under this Lease (including, without limitation, the Alterations Threshold, the Restoration Threshold, the Outstanding Alterations Payables Threshold and the Reference Net Worth) (and not with respect to the Base Rent or the limits of the insurance required to be maintained pursuant to Article XI hereof), such baskets and thresholds shall be adjusted every five (5) years on the anniversary of the Commencement Date by multiplying the applicable amount by the greater of (a) 1.0, or (b) a fraction, the numerator of which shall be the CPI as most recently published prior to the date of such adjustment and the denominator of which shall be the CPI for the month in which the Commencement Date occurs.

20.23 **Intended Lease Treatment**. Landlord and Tenant intend that, with respect to each Property, this Lease constitutes (a) an operating lease and not a financing for financial accounting purposes and (b) a lease for U.S. federal income tax purposes (together, the "Intended Lease Treatment"). If either Landlord or Tenant determine that this Lease cannot be treated consistent with the Intended Lease Treatment with respect to one or more Properties, the Parties shall cooperate to amend the terms of this Lease with respect to the relevant Properties, including changing the Initial Term with respect to such Properties, solely to the extent necessary to treat this Lease consistent with the Intended Lease Treatment with respect to such Properties. Notwithstanding the foregoing, neither Party shall be required to amend any term of this Lease if the change(s) would have a material adverse effect on such Party.

20.24 **State-Specific Provisions**. The State Specific Provisions shall be deemed a part of and included within the terms and provisions of this Lease. None of the State Specific Provisions shall be deemed to limit the choice of law provisions set forth in Section 20.5. In the event of any conflict or inconsistency between the terms of the State Specific Provisions and the other terms and conditions of this Lease as the same pertain only to the Properties located in the relevant State, the terms and conditions of the State Specific Provisions shall control and be binding with respect to such Properties.

ARTICLE XXI
BROKERS

21.1 **Brokers**. Tenant hereby represents and warrants that it has not had any contact or dealings with any real estate broker, agent or finder or other similar Person (a "**Broker**") that would give rise to any obligation to pay such Broker any fee, brokerage commission or other payment in connection with this Lease, and Tenant shall indemnify, protect, hold harmless and defend Landlord and all other Landlord Indemnified Parties from and against any claims, liabilities, damages, fees, costs and expenses, including reasonable attorneys' fees and expenses and court costs (including any of the foregoing that may be incurred in the enforcement of this Section 21.1) with respect to any obligation to pay a Broker any such fee, brokerage commission or other payment to the extent such obligation arises out of any act or omission of Tenant. Landlord hereby represents and warrants that it has not had any contact or dealings with any Broker that would give rise to any obligation to pay such Broker any fee, brokerage commission or other payment in connection with this Lease, and Landlord shall indemnify, protect, hold harmless and defend Tenant and the other Tenant Indemnified Parties from and against any claims, liabilities, damages, fees, costs or expenses, including reasonable attorneys' fees and expenses and court costs (including any of the foregoing that may be incurred in the enforcement of Section 21.1) with respect to any obligation to pay a Broker any such fee, brokerage commission or other payment to the extent such obligation arises out of any act or omission of Landlord.

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ARTICLE XXII
ANTI-TERRORISM

22.1 Anti-Terrorism Representations.

(a) Each Party hereby represents and warrants that neither such Party, nor, to such Party' s knowledge, any Persons (other than shareholders of a publicly traded company or certificateholders of a registered trust) holding any legal or beneficial interest whatsoever in such Party, is (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("**OFAC**"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons" (collectively, "**Prohibited Persons**").

(b) Each hereby represents and warrants to the other Party that no funds tendered to such other Party under the terms of this Lease are or will be directly or, to such first Party' s knowledge, indirectly derived from activities that may contravene U.S. federal, state or international laws and regulations, including anti-money laundering laws.

(c) Neither Party shall engage in any transactions or dealings, or otherwise be associated, with any Prohibited Persons during the Term.

(d) In the event that any of the foregoing representations or warranties is untrue, or any of the foregoing covenants is breached, at any time during the Term and any Indemnified Party suffers or incurs any damages, losses, claims or liabilities as a result thereof, the same shall constitute a Landlord Indemnified Matter or a Tenant Indemnified Matter, as applicable, pursuant to Article XV.

ARTICLE XXIII
FAIR MARKET RENT DISPUTES

23.1 Fair Market Rent Disputes. Within ten (10) Business Days after the delivery of a Fair Market Rent Dispute Notice pursuant to Section 1.3(c), each of Landlord and Tenant shall attempt to agree on the Fair Market Rent. Failing such agreement as to the Fair Market Rent for any applicable Demised Premises, the Fair Market Rent shall be determined in the following manner:

(a) Within twenty (20) days of the date of any Fair Market Rent Dispute Notice, Landlord and Tenant shall endeavor to select jointly a single appraiser ("**Single Appraiser**"), who shall then render an appraisal and the rent so determined shall be the Fair Market Rent for the applicable Demised Premises.

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(b) If Landlord and Tenant are unable timely to agree on a Single Appraiser, then within thirty (30) days of the Fair Market Rent Dispute Notice, Landlord and Tenant shall each select an appraiser, and the two so chosen shall select a third appraiser (or, if the two so chosen cannot agree on a third appraiser, the third appraiser shall be designated by the American Society of Appraisers). Each of such three appraisers shall render an appraisal, and the Fair Market Rent shall be determined by the average of the two appraisals which are closest to each other in dollar amount.

(c) If a Single Appraiser is chosen, the expenses of the appraisal shall be equally divided between Tenant and Landlord. Tenant and Landlord shall each bear the expenses of whichever of the respective two appraisers was selected by it, and the expenses of the third appraiser shall be equally divided between Tenant and Landlord.

(d) All appraisers shall be members of the Appraisal Institute of the American Society of Appraisers, shall have no "disqualifying interests", and have at least ten (10) years of experience appraising industrial properties comparable to the applicable Demised Premises. As used in this Section 23.1(d), a "disqualifying interest" shall be any direct or indirect financial or other business interest or relationship with either Landlord or Tenant or their respective Affiliates (except to the extent waived in writing by the other Party).

(e) Each of Landlord and Tenant shall be obligated, promptly after receipt of the valuation report prepared by the appraiser appointed by it, to deliver a copy of such valuation report to the other party in the manner provided in Article 19. At the time of appointment, the third appraiser shall be directed to promptly deliver copies of his valuation report to both Landlord and Tenant in the manner provided in Article 19. Time is of the essence of the appraisal process described herein. All appraisers described herein must deliver their appraisal reports within ninety (90) days of the date of delivery of the Fair Market Rent Dispute Notice. Notwithstanding anything herein to the contrary, any appraisals delivered after that date shall not be taken into account and appraisals that are timely obtained are the only appraisals that shall be taken into account.

(f) The provisions of this Section 23.1 shall be specifically enforceable to the extent such remedy is available under applicable Legal Requirements, and any final determination of any Fair Market Rent in accordance with such provisions shall be final and binding among the Parties except to the extent such result is prohibited by applicable Legal Requirements.

ARTICLE XXIV
ESTOPPEL CERTIFICATES

24.1 Estoppel Certificates.

(a) During the Term, Tenant shall, within twenty (20) days after request therefor by Landlord, execute, acknowledge and deliver to Landlord, any Landlord Lender or any other Person designated by Landlord, an Estoppel Certificate (which shall expressly provide that it may be relied upon by such Person and its successors and assigns).

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(b) During the Term, Landlord shall, within twenty (20) days after request therefor by Tenant, execute, acknowledge and deliver to Tenant, any lender of a Tenant Party or any other Person designated by Tenant, an Estoppel Certificate (which shall expressly provide that it may be relied upon by such Person and its successors and assigns).

ARTICLE XXV
SURRENDER OF DEMISED PREMISES

25.1 **Surrender of Demised Premises**. Upon the expiration or earlier termination of this Lease with respect to all or any portion of any Demised Premises, whether on the Expiration Date with respect to the entire Demised Premises, on any Property Termination Date with respect any individual Demised Premises or otherwise, Tenant shall surrender and deliver the applicable Demised Premises to Landlord (a) vacant and free from all subtenants, licensees or other occupants (other than pursuant to subleases for which Landlord has granted a Subtenant SNDA), (b) in at least the same condition as the condition of such Demised Premises on the Commencement Date, ordinary wear and tear excepted and except as repaired, restored, altered or added to as permitted or required by the provisions of this Lease, (c) in compliance in all material respects with all applicable Property Requirements, (d) with all Tenant' s Property and all Alterations (other than Permissible Alterations that Tenant elects not to remove) removed, and with such Demised Premises repaired and restored in accordance with the terms hereof following any such removal and (e) free and clear of all Encumbrances first arising after the Commencement Date, other than Permitted Encumbrances (except for any Excepted Liens not Bonded by Tenant, Tenant hereby acknowledges that Tenant shall in all events remain liable for the discharging or Bonding of all Excepted Liens in accordance with the terms of this Lease) (the foregoing, collectively, the "**Required Return Condition**"). Notwithstanding the foregoing, solely to the extent that any such termination of this Lease results from a Casualty or a Condemnation, the foregoing clauses (b), (c) and (d) shall not apply to the portion of the applicable Demised Premises affected by such Casualty or Condemnation and Tenant' s obligations with respect thereto shall instead be as provided in Article XII.

ARTICLE XXVI
TENANT BANKRUPTCY

26.1 **Tenant Bankruptcy**(a) . As a material inducement to Landlord executing this Lease, Tenant hereby acknowledges and agrees that Landlord is relying upon (i) the financial condition and specific operating experience of the Tenant Parties and Tenant' s obligation to use the Demised Premises specifically for the Permitted Use and (ii) Tenant' s timely performance of all of its obligations under this Lease notwithstanding the entry of an order for relief under the Bankruptcy Code for Tenant.

(b) Accordingly, in consideration of the mutual covenants contained in this Lease and for other good and valuable consideration, the receipt and sufficiency of which Tenant hereby acknowledges, Tenant hereby agrees that:

(i) Any and all Rent that accrues or becomes due from and after any such Insolvency Event and that is not paid as required under this Lease shall, in the amount of such Rent, constitute administrative expense claims allowable under the Bankruptcy Code with priority of payment at least equal to that of any other actual and necessary expenses incurred after the occurrence of such Insolvency Event;

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(ii) Any assignment of this Lease must result in all terms and conditions of this Lease being assumed by the assignee without alteration or amendment unless Landlord otherwise consents in writing to such alteration or amendment;

(iii) Any proposed assignment of this Lease to an assignee in violation of the provisions of Article IX shall be harmful and prejudicial to Landlord;

(iv) The rejection (or deemed rejection) of this Lease for any reason whatsoever shall constitute an Event of Default;

(v) No provision of this Lease shall be deemed to constitute a waiver of any of Landlord' s rights or remedies under any Bankruptcy Laws to oppose any assumption and/or assignment of this Lease, to require timely performance of Tenant' s obligations under this Lease, or to regain possession of all or any Demised Premises as a result of an Event of Default;

(vi) Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as such, shall constitute "rent" for the purposes of the Bankruptcy Code and any other Bankruptcy Laws; and

(vii) For purposes of this Section 26.1, with respect to all rights and obligations of Landlord and Tenant in connection with any Insolvency Event, the term "Tenant" shall include Tenant' s successor in bankruptcy, whether a trustee, Tenant as debtor in possession or other responsible person.

ARTICLE XXVII
ALTERNATIVE DISPUTE RESOLUTION–EXPEDITED ARBITRATION

27.1 **Binding Arbitration**. All disputes, claims or controversies arising under this Lease between the Parties with respect to whether Landlord has granted or withheld (or failed to grant or withhold) its consent or approval to any matter in violation of the applicable terms and provisions of this Lease (each, a "**Consent Dispute**"), and all other disputes, claims or controversies arising under this Lease between the Parties that, by the terms of this Lease, are stated to be resolved by arbitration pursuant to this Section 27.1 (together with Consent Disputes, each a "**Dispute**"), shall be addressed and resolved in accordance with the following binding arbitration procedures, and no other claim shall be brought in any court or under other dispute resolution process, and no other remedy shall be sought to be exercised by the Parties with respect to the subject matter of any such Dispute:

(a) The arbitration of such Dispute shall be conducted pursuant to the Expedited Procedures of the Commercial Arbitration Rules ("**Arbitration Rules**") of the American Arbitration Association ("**AAA**") in New York, New York.

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(b) Such arbitrator shall be a disinterested party, selected from a current AAA list using then current AAA-recommended selection method or by the Parties, using the so-called "Corcoran" selection method, if so requested by any Party.

(c) After his or her appointment, such arbitrator shall hold a conference with the Parties with respect to such Dispute as soon as practicable (but in any event within five (5) days of such appointment) to define and narrow the issues and claims to be arbitrated, to define and limit discovery and to identify the form of evidence to be presented. All such discovery shall be completed within five (5) Business Days of said conference.

(d) Any arbitration shall be conducted by such arbitrator under the guidance of the Federal Rules of Civil Procedure and the Federal Rules of Evidence, as modified by the Arbitration Rules, but such arbitrator shall not be required to comply strictly with such rules in conducting any such arbitration.

(e) Such arbitrator shall conduct such evidentiary or other hearings (not to exceed two (2) days) as such arbitrator shall deem necessary or appropriate, and thereafter shall make a determination as soon as practicable and in no event later than fourteen (14)-days following the conclusion of such hearings.

(f) A full and complete record of such arbitration shall be maintained, and the decision of such arbitrator shall be accompanied by detailed written findings of fact and conclusions of law of the arbitrator.

(g) Unless otherwise determined by the arbitrator, the non-prevailing Party in such arbitration shall bear the Costs and Expenses of the Parties in connection therewith.

(h) In no event shall such arbitrator award or determine that any Party shall be entitled to (i) any indirect, speculative or consequential damages (including, without limitation, damages with respect to any lost profits) or (ii) subject to the foregoing clause (g), any other damages or compensation except (solely with respect to this clause (ii)) to the extent that such arbitrator determines that Landlord acted in bad faith in withholding its consent in violation of the applicable terms and provisions of this Lease in connection with the subject matter of a Consent Dispute.

(i) The Parties shall keep all such arbitration proceedings strictly confidential, except to the extent that disclosure is required by applicable Legal Requirements.

(j) Such arbitrator may make and grant interim and interlocutory awards and relief, including injunctive relief, which shall not be subject to appeal.

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(k) The final award by such arbitrator shall be final and binding on the Parties and shall not be subject to appeal, and judgment on the award may be entered in any court of competent jurisdiction.

(l) In the case of any conflict between a term or condition of this Lease and a term or condition of the Arbitration Rules, the terms and conditions of this Lease shall govern and control in all respects to the fullest extent permissible under applicable Legal Requirements.

ARTICLE XXVIII
REIT PROTECTION

28.1 REIT Protection.

(a) The Parties intend that the Rent and all other amounts paid by Tenant under this Lease shall qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto and this Lease shall be interpreted consistently with this intent.

(b) Notwithstanding anything to the contrary contained in this Lease, Tenant shall not, without Landlord' s prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed): (i) sublet, assign or enter into a management arrangement for all or any portion of any Demised Premises on any basis such that the rental or other amounts to be paid by the subtenant, assignee or manager thereunder would be based, in whole or in part, on either (A) the net income or profits derived by the business activities of the subtenant, assignee or manager or (B) any other formula or allocation such that, in each case, any portion of any amount received by Landlord (or received or deemed to be received for U.S. federal income tax purposes by any member of Landlord (or any Affiliate of any member of Landlord)) would fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto; (ii) furnish or render any services to the subtenant, assignee or manager or manage or operate all or any portion of any Demised Premises so subleased, assigned or managed if the same would reasonably be expected to cause any portion of any amount received by Landlord (or received or deemed to be received for U.S. federal income tax purposes by any member of Landlord (or any Affiliate of any member of Landlord)) to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto; or (iii) sublet, assign or enter into a management arrangement for all or any portion of any Demised Premises in any manner which could cause any portion of the amounts received by Landlord (or received or deemed to be received for U.S. federal income tax purposes by any member of Landlord (or any Affiliate of any member of Landlord)) pursuant to this Lease or any sublease to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto, or which could cause any other income of Landlord or any member of Landlord (or any Affiliate of any member of Landlord) to fail to qualify as income described in Section 856(c)(2) of the Code. The requirements of this Section 28.1(b) shall likewise apply to any further subleasing by any subtenant.

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(c) Notwithstanding anything to the contrary contained in this Lease, the Parties acknowledge and agree that Landlord, in its sole discretion, may assign this Lease or any interest herein to another Person (including, without limitation, a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code)) to maintain the status of any member of Landlord (or any Affiliate of any member of Landlord) as a "real estate investment trust" (within the meaning of Section 856(a) of the Code).

(d) Notwithstanding anything to the contrary contained in this Lease, but subject to the provisions of Section 20.21, upon the written request of Landlord, Tenant shall cooperate with Landlord in good faith and at no cost or expense to Tenant, and provide such documentation and/or information as may be in Tenant' s possession or under Tenant' s control and otherwise readily available to Tenant as shall be reasonably requested by Landlord in connection with verification of "real estate investment trust" (within the meaning of Section 856(a) of the Code) compliance requirements. Tenant shall take such reasonable action as may be requested by Landlord from time to time to ensure compliance with the Internal Revenue Service requirement that Rent allocable for purposes of Section 856 of the Code to personal property, if any, at the beginning and end of a calendar year does not exceed fifteen percent (15%) of the total Rent due hereunder as long as such compliance does not (i) increase Tenant' s monetary obligations under this Lease other than to a de minimis extent (unless Landlord agrees to reimburse Tenant for any such increased monetary obligations, in which case this clause (i) shall not apply), (ii) increase Tenant' s non-monetary obligations under this Lease other than to a de minimis extent, or (iii) reduce Tenant' s rights under this Lease other than to a de minimis extent.

[SIGNATURES FOLLOW]

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IN WITNESS WHEREOF, this Lease has been executed and delivered by the Parties effective as of the date first written above.

LANDLORD:

J. C. PENNEY PROPERTIES, LLC,
a Delaware limited liability company

By: /s/ Dawn Wolverton
Name: Dawn Wolverton
Title: Assistant Secretary

J. C. PENNEY CORPORATION, INC.,
a Delaware corporation

By: /s/ Bill Wafford
Name: Bill Wafford
Title: Chief Financial Officer

TENANT:

PENNEY TENANT II LLC,
a Delaware limited liability company

By: /s/ Dawn Wolverton
Name: Dawn Wolverton
Title: Assistant Secretary

[Signature Page to Distribution Centers Master Lease]

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Exhibit 10.3

EXECUTION VERSION

TRANSITION SERVICES AGREEMENT

BY AND BETWEEN

PENNEY BORROWER LLC

AND

J. C. PENNEY CORPORATION, INC.

DATED AS OF DECEMBER 7, 2020

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Exhibits

Exhibit A Services

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TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this "Agreement") is made and entered into as of December 7, 2020 (the "Effective Date"), by and between Penney Borrower LLC, a Delaware limited liability company (the "Service Provider"), and J. C. Penney Corporation, Inc., a Delaware corporation ("Recipient" or "JCP"). The Service Provider and Recipient each are sometimes referred to as a "Party" and together sometimes are referred to as the "Parties." Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Asset Purchase Agreement, dated as of October 28, 2020, by and among J. C. Penney Company, Inc., Copper Retail JV LLC, a Delaware limited liability company, Copper BidCo LLC, a Delaware limited liability company, and the other parties thereto (the "Purchase Agreement").

For good and valuable consideration, the receipt of which the Parties hereby acknowledge, the Parties hereby agree as follows:

ARTICLE I.
SERVICES

1.01 Services to be Provided.

(a) The Service Provider shall provide, or cause to be provided, to Recipient the services described on Exhibit A (each, a "Service," and collectively, the "Services") commencing on the Effective Date and continuing through the Term (as defined below) unless (i) otherwise specified for a particular Service on Exhibit A or in accordance with Section 3.02 or (ii) this Agreement is terminated in accordance with the terms and conditions hereof prior to the expiration of the Term.

(b) Except as expressly stated in Exhibit A, in the event of any conflict or inconsistency between this Agreement and Exhibit A, this Agreement shall control. Unless otherwise agreed in writing by the Parties, the Services to be provided by or at the direction of the Service Provider under this Agreement are limited to those expressly stated herein, and those modified or added to this Agreement by a Service Change (defined in Section 1.03). This Agreement, and the Services, Fees and Expenses (each, as defined below) hereunder, may only be modified by a written amendment executed by both Parties.

(c) All Services shall be for the sole use and benefit of Recipient.

(d) Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall require the Service Provider to (i) provide any business managerial, advisory, assurance and representation or audit services to Recipient or to direct the business, financial or strategic policies or decisions of Recipient; (ii) provide any legal or tax services (other than tax processing services) or legal or tax advice to Recipient and Recipient shall not be entitled to rely on the Service Provider for legal or tax advice or counsel, nor shall any advisory communication given by the Service Provider to Recipient be construed as legal advice; (iii) hire any additional employees or other personnel or retain any particular employees or other personnel; (iv) purchase, lease or license any equipment or software not leased, licensed or owned by the Service Provider as of the date hereof; (v) enter into any new contracts or agreements or change the scope of any current contract or agreement, except as expressly required pursuant to this Agreement; or (vi) expand its facilities or incur new capital expenses in

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order to provide any Services. For the avoidance of doubt, the Service Provider shall use commercially reasonable efforts to replace departed employees or other personnel to the extent that such employees or other personnel are necessary to provide the Services at the standard required by Section 1.06; provided, however, that the Service Provider shall not be required to replace any departed employees or other personnel during the term of the Benefits TSA. The Service Provider shall not be required to perform any obligation under this Agreement that would result in the breach or violation of any applicable Law or third party contract or agreement, including any Vendor Agreement (as defined below).

1.02 Quantity and Nature of Service. Except as otherwise provided in this Agreement, and subject to Section 1.03 and Section 3.02 without the mutual written agreement of the Parties, there shall be no change in the scope or level of, or use by, Recipient of the Services during the Term (including changes requiring the hiring or training of additional employees by the Service Provider) and no adjustments to the charges for such Services. Recipient shall not resell any Services or provide the Services to any joint venture in which it participates or any non-wholly owned Subsidiary.

1.03 Modifications. Without Recipient' s consent, the Service Provider may make changes from time to time in the manner of performing Services (a) by making changes to its, its Affiliates' and its personnel' s systems, (b) by engaging employees or its Affiliates' employees or any third party provider contracted by the Service Provider or its Affiliates (each such third party provider, a "Vendor") to perform all or any portion of the Services, (c) to the extent the same modification is made with respect to the entirety of the Service Provider' s provision of the same service for its own purposes or to its Affiliates and other Persons to whom the Service Provider provides such service, or (d) if provision of such Service is prohibited or restricted by applicable Law. The Service Provider shall provide Recipient with reasonably advanced notice of any such changes to the extent permissible under the circumstances.

1.04 Changes in the Services. If Recipient desires to make changes in this Agreement to provide for different or additional Services to be provided by the Service Provider (each, a "Service Change"), the Parties shall comply with the following Service Change process:

(a) Recipient shall prepare a written proposal for the Service Change including a description of the services, deliverables and schedule, in each case in such detail as would be needed by an unaffiliated third party contractor to develop a competent price proposal for similar services. For special project work that is within the scope of services covered by an hourly or unit rate in Exhibit A, Recipient may use the hourly rate or unit rate stated in Exhibit A in developing the proposal price.

(b) All Service Change proposals and responses must be delivered by a Party' s Contact Person (as defined below) to the other Party' s Contact Person. If the Service Provider can provide the different or additional services proposed in a Service Change with its then-existing resources and capabilities, then the Service Provider and Recipient may proceed to negotiate in good faith a proposed amendment to Exhibit A of this Agreement to reflect the Service Change, including any changes to the services, deliverables, schedule, fees, and expenses under this Agreement; provided, however, that the Service Provider shall have no obligation to provide any different or additional services proposed in a Service Change. For the avoidance of doubt, each

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modified or additional service reflected in Exhibit A, as amended, shall be deemed a "Service" in accordance with the terms and conditions of this Agreement. If the Service Provider arranges for the additional services under a Service Change to be provided by a Vendor, at the request of the Service Provider, Recipient shall execute a written agreement directly with the Vendor for such additional services. In the absence of a signed amendment, the Parties must fulfill their obligations under this Agreement without regard to such proposed amendment or Service Change.

1.05 Transition Assistance. Upon the reasonable request of Recipient, the Service Provider shall use commercially reasonable efforts to cooperate with Recipient and provide Recipient with all information as is reasonably necessary to assist Recipient with any transitions of Services to Recipient, its Affiliates or third party providers that Recipient elects to undertake, in each case at Recipient' s sole cost and expense; provided, however, that the Service Provider shall not be required to disclose any information to the extent disclosure of such information to Recipient (i) is not permitted under applicable Law, (ii) is subject to any contractual restrictions which prevent the Service Provider from disclosing such information or (iii) could jeopardize any attorney client privilege of the Company or any of its Subsidiaries. Any such information disclosed by the Service Provider shall be subject to Article IV.

1.06 Standard of Care. Except as otherwise set forth in this Agreement, the Service Provider does not assume any responsibility under this Agreement other than to render the Services (i) in substantially the same manner and quality as such Services were provided by the Service Provider, its Affiliates and Vendors immediately prior to the PropCo Closing Date, as applicable and (ii) in compliance with all applicable Laws, without willful misconduct or gross negligence. THE SERVICE PROVIDER MAKES NO OTHER GUARANTEE, REPRESENTATION OR WARRANTY OF ANY KIND (WHETHER EXPRESS OR IMPLIED) REGARDING ANY OF THE SERVICES PROVIDED HEREUNDER, AND EXPRESSLY DISCLAIMS ALL OTHER GUARANTEES, REPRESENTATIONS AND WARRANTIES OF ANY NATURE WHATSOEVER, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. SUBJECT TO THE OTHER PROVISIONS OF THIS AGREEMENT, THE SERVICE PROVIDER SHALL ONLY BE OBLIGATED TO PROVIDE SERVICES IN A MANNER CONSISTENT WITH PAST PRACTICE.

1.07 [Reserved].

1.08 Good Faith Cooperation; Alternatives. The Parties shall use good faith efforts to cooperate with each other in all matters relating to the provision and receipt of the Services. Subject to Section 2.04, if the Service Provider reasonably believes it is unable to provide any Service because of a failure to obtain Vendor consents or because of impracticability, the Service Provider shall notify Recipient promptly after the Service Provider becomes aware of such fact and the Parties shall cooperate to determine the best alternative approach.

1.09 Use of Third Parties. The Service Provider may use any Affiliate or any Vendor (including former Affiliates) to provide all or any portion of the Services without the prior written consent of Recipient; provided that any such Affiliate or Vendor shall be capable of providing such Services in substantially the same manner as such Services were provided by the Service

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Provider, its Affiliates and Vendors as of the PropCo Closing Date and otherwise in accordance with Section 1.06. Such Affiliate or Vendor shall be bound by obligations of confidentiality and restrictions on use of Confidential Information contained in this Agreement. Notwithstanding the foregoing, the Service Provider shall be liable for the failure of any Affiliate or Vendor contracted by the Service Provider to provide or to continue providing Services on the terms set forth herein.

1.10 Ownership of Information and Other Assets. Neither Party shall acquire under this Agreement any right, title or interest in any asset that is owned or licensed by the other. All information provided by or on behalf of a Party to the other Party or its Affiliates for the purpose of providing or receiving the Services shall remain the property of the Party providing such information. To the extent the provision of any Service involves Intellectual Property, including software or patented or copyrighted material, or material constituting trade secrets, each Party agrees that it and its Affiliates shall not copy, modify, reverse engineer, decompile or in any way alter any of such material, or otherwise use such material in a manner inconsistent with the terms and provisions of this Agreement, without the express written consent of the other Party. All specifications, tapes, software, programs, services, manuals, materials and documentation developed or provided by the Service Provider, its Affiliates or its Vendors and utilized in performing this Agreement shall be and remain the property of the Service Provider, such Affiliates or such Vendors, as applicable, and shall not, without the Service Provider' s prior written consent, be sold, transferred, disseminated or conveyed by Recipient or its Affiliates to any other Person (other than their Affiliates and their respective directors, officers, employees, agents and representatives, in each case, for purposes of receiving the Services under, or in performing, this Agreement) or used, in each case other than in receiving the Services under, or in performing, this Agreement.

1.11 Contact Person. Each Party shall appoint one or more contact persons (the "Contact Persons") to facilitate communications and performance under this Agreement. The initial Contact Person of the Service Provider shall be Brandy Treadway and the initial Contact Persons of Recipient shall be Steve Panagos and Alan Carr. Unless the Parties otherwise agree in writing, all communications relating to this Agreement and the Services shall be directed to the Contact Persons. Each Party shall have the right at any time and from time to time to replace its Contact Person by written notice to the other Party delivered in accordance with the notice provision set forth in Section 6.08. The Contact Persons shall attempt to resolve all disputes in good faith.

ARTICLE II.
CHARGES AND PAYMENTS FOR SERVICES

2.01 Compensation.

(a) As consideration for the provision of the Services, Recipient shall pay, or cause to be paid, to the Service Provider or its designee(s) the fees for the Services as specified on Exhibit A (the "Fees"), payable as provided on Exhibit A. Upon termination of an individual Service, Recipient shall pay all Fees attributable to the Service being terminated actually performed, or expense actually incurred, through the date of termination of such Service.

(b) In addition to the Fees, Recipient shall reimburse the Service Provider or its designee(s) for all reasonable and documented out-of-pocket costs and expenses actually incurred

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in the Service Provider' s or its Affiliate' s performance of the Services that are not included in the Fees, including costs and expenses for (i) travel and accommodations and (ii) all third-party personnel used to perform the Services under this Agreement on a cost basis (all such costs and expenses, collectively, the "Expenses"). Except as otherwise provided for in this Agreement, each Party shall bear its own expenses with respect to the transactions contemplated by this Agreement.

2.02 Payments. In accordance with this Section 2.02, Recipient shall be charged, and shall pay, or cause to be paid, the Fees and Expenses for each Service provided during the Term and any costs related to the termination of such Service, as set forth in Article III. Recipient will not be charged for any Services after the effective date of any early termination of such Service pursuant to Article III, except to the extent charges have accrued and not been paid prior to any such termination. Fees and Expenses shall be billed monthly by the Service Provider for the Services delivered during the preceding month. Recipient shall pay all invoiced amounts in full within 30 days after Recipient' s receipt of the invoice.

2.03 Taxes. The Parties hereby acknowledge that the Fees specified on Exhibit A do not include applicable taxes. Recipient shall be responsible for the payment of all taxes payable in connection with the Services, including sales, use, excise, value-added, business, service, goods and services, consumption, withholding and other similar taxes or duties, including taxes incurred on transactions between and among the Service Provider, its Affiliates, Vendors and personnel, along with any related interest and penalties ("Transaction Taxes"). Notwithstanding anything in this Section 2.03 to the contrary, each Party shall be responsible for its own income and franchise taxes, employment taxes and property taxes, except as otherwise provided in the Purchase Agreement or any of the other Ancillary Agreements. The Parties shall cooperate in good faith to minimize Transaction Taxes to the extent legally permissible. Each Party shall provide to the other Party any resale exemption, multiple points of use certificates, treaty certification and other exemption information reasonably requested by such other Party. To the extent the Service Provider pays or is required to pay any Transaction Taxes that are the responsibility of Recipient in accordance with the preceding sentences, Recipient shall promptly reimburse the Service Provider for any such Transaction Taxes. If Recipient is required to withhold from any amounts otherwise due and payable to the Service Provider pursuant to this Agreement, Recipient shall be permitted to so withhold and any amounts withheld shall be deemed paid to the Service Provider for purposes of this Agreement. If any such withholding relates to amounts other than with respect to taxes described in the third sentence of this Section 2.03, the amount paid to the Service Provider by Recipient for such Services shall be increased as necessary so that after all such required deductions and withholdings have been made (including such deductions or withholdings applicable to additional sums payable hereunder), the Service Provider receives an amount equal to the sum it would have received had no such deductions or withholdings been made.

2.04 Vendor Agreements.

(a) The Parties anticipate that the Service Provider may rely upon its and its Affiliates' existing agreements with third parties to provide certain of the Services described herein (each, a "Vendor Agreement"). If (a) the Service Provider' s or its Affiliates' costs, fees or expenses increase under the terms of a Vendor Agreement or (b) the Vendor demands or is entitled to additional costs, fees or expenses now or in the future, then, in each case, arising from the use or provision of all or any portion of the Services pursuant to this Agreement, in addition to all other

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amounts due hereunder, Recipient shall be liable for the portion of associated documented increased or additional amounts under this Section 2.04 to the extent that such costs, fees or expenses are incurred in the performance of the Services, in each case as such amounts are determined by the Service Provider in good faith. All costs, fees and expenses arising under a Vendor Agreement, including any such additional costs, fees or expenses, shall be deemed "Expenses," without duplication of the Fees. The Service Provider shall notify Recipient promptly after it learns of any increased amounts due under this Section 2.04(a). In addition, at Recipient' s request and sole cost and expense, the Service Provider will use commercially reasonable efforts to replace any such Vendor that has increased its fees with another third party provider that provides the applicable Service(s) at a lower fee and comparable level of service; provided, however, that Service Provider shall not be required to replace any Vendor if such replacement would negatively impact the Service Provider' s business in any way. To the extent any such Vendor Agreement includes early termination fees or similar charges (the "Vendor Termination Fees"), Recipient shall be solely responsible for any such Vendor Termination Fees that the Service Provider or its Affiliates incur as a result of the transaction contemplated under this Agreement and/or Recipient and/or its Affiliates ceasing to use the Services under this Agreement.

(b) In the event any third party consent, waiver or approval is required for the Service Provider or its designees to provide any Services and such consent, waiver or approval is not obtained, the Parties shall cooperate in good faith to identify a commercially reasonable alternative to such Services, if available; provided, however, that nothing in this Section 2.04 shall require the Service Provider to (i) enter into any new contracts with third parties or (ii) pay increased fees or other consideration for any required consent unless Recipient pays the Service Provider for such increased fees or other consideration. Neither the Service Provider nor its Affiliates shall be required to provide any Services for which any consent, waiver or approval of any third party is required but not obtained.

2.05 Access to Records; Audit Rights.

(a) Each Party agrees to use commercially reasonable efforts to maintain, and to cause its applicable Affiliates to maintain, books and records arising from or related to any Services provided hereunder that are accurate and complete in all material respects during the term of each Service and for a period of two (2) years following the termination or expiration of such Service, including but not limited to accounting records and documentation produced in connection with the rendering of any Service and in the calculation of any compensation payable pursuant hereto (the "Records").

(b) On no more than one occasion following the first date on which the Term of all of the Services has expired, Recipient shall have the right to review the Records of the Service Provider and its Affiliates pertaining to the Services received prior to such date. Recipient shall use an independent accounting firm to perform any such review that is reasonably acceptable to the Service Provider. Prior to Recipient using an independent accounting firm, such independent accounting firm shall enter into an agreement with the Parties, on terms that are agreeable to both Parties, under which such independent accounting firm agrees to maintain the confidentiality of the information and materials reviewed during the course of such review. The findings of such review shall be considered Confidential Information for the purposes of this Agreement.

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(c) Any review shall be conducted during regular business hours, upon reasonable advance notice (delivered within thirty (30) days of the first date on which the Term of all of the Services has expired) and in a manner that does not interfere unreasonably with the operations of the Service Provider or its Affiliates. Each review shall begin upon the date agreed by the Parties, but in no event more than ten (10) business days after notice from Recipient of such review, and shall be completed as soon as reasonably practicable. Recipient shall pay or cause to be paid all costs, fees and expenses of conducting such review, unless the results of an audit reveal an overpayment of the applicable audited Service of 20% or more, in which case, the Service Provider shall pay or cause to be paid the lesser of the pro-rata portion of the review fees for reviewing such Service or an amount equal to the amount of the overpayment. If the review concludes that an overpayment or underpayment has occurred during the reviewed period, such payment shall be remitted by the Party or its Affiliate responsible for such payment to the other Party or its Affiliate to whom such payment is owed within thirty (30) days after the date such accounting firm' s written report identifying the overpayment or underpayment is delivered to the Party who is, or whose Affiliate is, responsible for such payment, provided that should the Service Provider dispute the findings of a review conducted by Recipient, the Service Provider may withhold any disputed amounts due to Recipient pursuant to this Section 2.05(c) pending the resolution of such dispute in accordance with the dispute resolution mechanism set forth in Section 2.9 of the Purchaser Agreement, *mutatis mutandis*.

ARTICLE III.
TERM AND TERMINATION

3.01 Term. The term of this Agreement shall commence on the PropCo Closing Date and shall terminate with respect to each Service as set forth on Exhibit A with respect to such Service (the "Term"); provided, that this Agreement shall terminate when all Services to be provided by the Service Provider under this Agreement have been terminated (or the terms of which have expired) in accordance with the terms of this Agreement, unless this Agreement is terminated sooner in accordance with Section 3.03 or extended by the mutual written agreement of the Parties.

3.02 Termination of an Individual Service by Recipient. Subject to the next sentence, Recipient, upon thirty (30) days' prior written notice to the Service Provider or otherwise upon the mutual agreement of the Parties, may terminate in whole but not in part any individual Service at the end of a Service Provider fiscal month for any reason. Recipient may not terminate an individual Service if, after reasonable consultation, the termination of such Service would adversely affect the Service Provider' s ability to perform another Service that is not then being reduced or terminated. Upon termination of any Service, in accordance with this Agreement, Service Provider will have no further obligation to provide such terminated Service. Any termination with respect to any individual Service shall not terminate this Agreement with respect to any other Service then being provided pursuant to this Agreement. To the extent that the Service Provider' s ability to provide a Service is dependent on the continuation of any other Service, and such dependence has been made known to Recipient in writing, the Service Provider' s obligation

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to provide such dependent Service shall terminate automatically with the termination of such supporting Service. Any termination of a Vendor Agreement shall not, in itself, constitute a termination of any Services provided under such terminated Vendor Agreement unless such Services have also been terminated in accordance with this Section 3.02.

3.03 Termination of the Agreement. Recipient may terminate this Agreement for any reason upon thirty (30) days' prior written notice to the Service Provider. The Service Provider may terminate this Agreement in the event of a material breach of any of the obligations set forth in this Agreement by Recipient if Recipient fails to cure the breach within thirty (30) days following receipt of written notice of the breach from the Service Provider.

3.04 Obligations on Termination. Promptly upon termination of this Agreement, each Party shall return to the other Party, as soon as reasonably practicable, all equipment or other property of the other Party or its Affiliates, whether owned, leased, or licensed, and Recipient shall pay all outstanding Fees for Services rendered and Expenses incurred through the date of termination of this Agreement in accordance with its terms. The foregoing obligations shall survive the termination of the Agreement in accordance with Section 6.02.

ARTICLE IV.
CONFIDENTIALITY

4.01 Confidential Information. Each Party acknowledges that the other Party may possess or have access to information that has been created, discovered or developed by such other Party and/or in which property rights have been assigned or otherwise conveyed to such other Party, which information and/or property rights have commercial value and are not in the public domain, including without limitation data, records, files, documents and other information associated with the business and Intellectual Property of the other Party and its Affiliates ("Confidential Information"). The Confidential Information of each Party will be and remain the sole property of such Party and its successors and permitted assigns. Each Party agrees that it shall not, and shall cause its Affiliates and its and its Affiliates' officers, directors, members, managers, partners, employees, agents, Advisors and other representatives ("Representatives") not to, use in any way, for their own account or the account of any third party, or disclose to any third party, any such Confidential Information without prior written authorization from the other Party, except as otherwise required by Law, a court of competent jurisdiction, or the rules of a national securities exchange and then only after notifying the other Party, to the extent reasonably practicable or permissible, in advance. Each Party shall use the same degree of care that it normally uses to protect its own Confidential Information, but in no event less than a commercially reasonable degree of care, to prevent the disclosure to third parties of Confidential Information of the other Party, other than disclosure of information by the Service Provider to the extent related to the provision of any Service in accordance with the terms of this Agreement. Neither Party shall make any use of the Confidential Information of the other Party except as necessary to perform or receive Services in accordance with the terms of this Agreement. Notwithstanding the foregoing, the restrictions set forth in this Section 4.01 shall not apply to any information that: (a) was, at the time of disclosure to it, generally available to the public through no breach of this Agreement by such Party; (b) was received by such Party from a third party who had a lawful right to disclose such information to the receiving Party; or (c) was independently developed by the receiving Party without reference to or use of the other party' s Confidential Information. Upon termination or

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expiration of all Services, each Party will promptly return to the other Party any of the other Party' s Confidential Information as well as proprietary software and/or equipment used to provide Services that is in its possession or control. This Section 4.01 shall survive any expiration or termination of this Agreement. Either Party shall have the right to establish backup security for its Confidential Information and to keep backup copies of any Confidential Information in any reasonable location at its own expense if it so desires, which backup copies shall remain subject to the terms of this Agreement. Each Party shall remove any Confidential Information of the other Party from any media taken out of service and shall destroy or securely erase such media in accordance with the then-current policies of such Party.

ARTICLE V.
INDEMNIFICATION; LIMITATION OF LIABILITY

5.01 Indemnification by Recipient. Recipient shall defend, indemnify and hold harmless the Service Provider and its Affiliates and its and their respective Representatives from and against any and all costs, liabilities, losses, penalties, expenses and damages (including reasonable attorneys' fees) of every kind and nature related to or arising out of (i) actions and failures to act by personnel of Recipient or its Affiliates or its and their respective Representatives in connection with this Agreement, (ii) Recipient' s breach of this Agreement, (iii) negligent act, omission or willful misconduct by Recipient or its Affiliates or its and their respective Representatives in using any Services rendered pursuant to this Agreement or (iv) the Service Provider' s performance of any Services pursuant to this Agreement (collectively, "Recipient Claims"), except to the extent that such Recipient Claims are found by a final judgment or opinion of an arbitrator or a court of competent jurisdiction to be caused by (i) a breach of any provision of this Agreement by the Service Provider or (ii) any gross negligence or willful misconduct of the Service Provider, its Affiliates, or its or their Representatives in performance of this Agreement.

5.02 Indemnification by the Service Provider. The Service Provider shall defend, indemnify and hold harmless each Recipient, its Affiliates and its and their respective Representatives (each, a "Recipient Indemnitee") from and against any and all costs, liabilities, losses, penalties, expenses and damages (including reasonable attorneys' fees) of every kind and nature arising from third-party claims, demands, litigation and suits that (a) relate to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the gross negligence or willful misconduct of the Service Provider, its Affiliates, or its or their respective directors, officers, employees, agents or representatives during the performance of the Services or (b) relate to the intentional infringement of any copyright or trade secret by an asset owned by the Service Provider or its Affiliates and used by the Service Provider in the performance of the Services (together, "Service Provider Claims"). Notwithstanding the foregoing obligations set forth in this Section 5.02, the Service Provider shall not be required to defend, indemnify or hold harmless any Recipient Indemnitee to the extent that such Service Provider Claims are found by a final judgment or opinion of an arbitrator or a court of competent jurisdiction to be caused by (i) a breach of any provision of this Agreement by Recipient or (ii) any gross negligence or willful misconduct, of Recipient, its Affiliates, or its or their respective Representatives in performance of this Agreement. Recipient Claims and Service Provider Claims are each individually referred to as a "Claim."

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5.03 Procedure. A Party seeking indemnification (the "Indemnified Party") pursuant to Section 5.01 or Section 5.02 shall promptly notify the other Party (the "Indemnifying Party") in reasonable detail of the event(s) giving rise to such claim for indemnification; provided that the failure or delay to give such notice shall not relieve the Indemnifying Party of its indemnity obligation, except to the extent the Indemnifying Party is actually prejudiced in its defense of the action by such failure or delay. With respect to a claim for indemnification arising from an action or omission by a third party, the Indemnifying Party shall have the right to undertake the defense of any claim upon delivery of notice to the Indemnified Party with respect to such claim. Such defense shall be made with counsel reasonably acceptable to the Indemnified Party. If the Indemnified Party fails to undertake the defense of the Indemnified Party, the Indemnified Party may retain its own counsel for such defense, and the Indemnified Party' s reasonable attorney' s fees and expenses related to such claim shall be paid by the Indemnifying Party. The Indemnifying Party shall not settle any such third-party claim without the consent of the Indemnified Party, not to be unreasonably withheld, delayed or conditioned.

5.04 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY, THEIR RESPECTIVE AFFILIATES, OR ITS OR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, LOSSES OR EXPENSES (INCLUDING BUSINESS INTERRUPTION, LOST BUSINESS, LOST PROFITS, LOST DATA, LOST SAVINGS, DAMAGES TO SOFTWARE OR FIRMWARE, OR COST OF PROCURING OR TRANSITIONING TO SUBSTITUTE SERVICES), REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, AND REGARDLESS OF WHETHER A PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY. THE SOLE LIABILITY OF THE SERVICE PROVIDER AND ITS AFFILIATES FOR ALL CLAIMS IN ANY MANNER RELATED TO THIS AGREEMENT ARE LIMITED TO THE PAYMENT OF DIRECT DAMAGES, NOT TO EXCEED (FOR ALL CLAIMS IN THE AGGREGATE) THE FEES RECEIVED BY THE SERVICE PROVIDER UNDER THIS AGREEMENT DURING THE SIX MONTHS PRECEDING THE DATE SUCH CLAIM AROSE.

ARTICLE VI.
MISCELLANEOUS

6.01 Computer Access. If either Party, its Affiliates or its or their respective personnel are given access, whether on-site or through remote facilities, to any communications, computer, or electronic data storage systems (each, an "Electronic Resource") of the other Party, its Affiliates or its or their respective personnel in connection with this Agreement, then the Party on behalf of whom such access is given shall ensure that its personnel' s use of such access shall be solely limited to performance or exercise of such Party' s duties and rights under this Agreement, and that such personnel will not attempt to access any Electronic Resource other than those specifically required for the performance of such duties and/or exercise of such rights. The Party given access shall (a) limit such access to those of its and its Affiliates' personnel who need to have such access in connection with this Agreement, (b) advise the other Party in writing of the name of each of such personnel who will be granted such access and (c) strictly follow all security rules and procedures for use of such Electronic Resources. All user identification numbers and passwords disclosed to a Party' s or its Affiliates' personnel and any information obtained by such Party' s or its Affiliates' personnel as a result of its access to, and use of, the other Party' s, its Affiliates' or

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their respective personnel' s Electronic Resources shall be deemed to be, and shall be treated as, confidential information of the Party on behalf of whom such access is granted. Each Party shall reasonably cooperate with the other Party in the investigation of any apparent unauthorized access by the other Party, its Affiliates or their respective personnel to any Electronic Resources or unauthorized release of Confidential Information. Each Party shall promptly notify the other Party of any actual or suspected unauthorized access or disclosure of any Electronic Resource of the other Party, its Affiliates or their respective personnel which is actually known to such Party.

6.02 Survival. Each term of this Agreement that would, by its nature, survive the termination or expiration of this Agreement shall so survive, including the obligations of each Party to pay all amounts accrued hereunder and the provisions of Section 1.10 and Section 6.06 and Article II, Article IV and Article V.

6.03 Equitable Relief. Each Party acknowledges that any breach by a Party of Section 1.10 or Section 4.01 may cause the non-breaching Party and its Affiliates irreparable harm for which the non-breaching Party and its Affiliates have no adequate remedies at law. Accordingly, in the event of any actual or threatened default in, or breach of, the foregoing provisions, each Party shall be entitled to seek equitable relief, including specific performance, and injunctive relief, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. A Party seeking such equitable relief may seek such relief regardless of any cure rights for such actual or threatened breach.

6.04 Complete Agreement. This Agreement, together with the Purchase Agreement and the Confidentiality Agreement and any other agreements expressly referred to herein or therein, contains the entire agreement of the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the transactions contemplated by this Agreement and supersedes all prior agreements among the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the transactions contemplated by this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control and prior drafts of this Agreement and the documents referenced herein will not be considered or analyzed for any purpose (including in support of parol evidence proffered by any Person in connection with this Agreement), will be deemed not to provide any evidence as to the meaning of the provisions hereof or the intent of the Parties with respect hereto and will be deemed joint work product of the Parties.

6.05 Amendment and Waiver. Any provision of this Agreement or the Exhibits hereto may be (a) amended only in a writing signed by the Service Provider and Recipient or (b) waived only in a writing executed by the Person against which enforcement of such waiver is sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any way any other provision or prior or subsequent breach or default.

6.06 Binding Effect; Assignment. This Agreement shall be binding upon the Service Provider and Recipient, and shall inure to the benefit of and be so binding on the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case; provided that neither this Agreement nor any of the rights or obligations hereunder may be assigned or delegated by Recipient without the prior written consent of the Service Provider, and any attempted assignment or delegation without such prior written consent shall be null and void. Notwithstanding the foregoing, Recipient shall be permitted to, and shall, assign all of its rights under this Agreement to PropCo Trust at the PropCo Closing. The Service Provider may assign or delegate this Agreement to an Affiliate without Recipient' s prior consent.

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6.07 Counterparts and PDF. This Agreement and any other agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one party hereto or thereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a facsimile machine, .PDF or other electronic transmission, will be treated in all manner and respects as an original Contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page to this Agreement or any agreement or instrument contemplated hereby, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any party hereto or thereto or pursuant to any such Contract, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other Parties. No party hereto or to any such Contract will raise the use of a facsimile machine, .PDF or other electronic transmission to deliver a signature or the fact that any signature or Contract was transmitted or communicated through the use of facsimile machine, .PDF or other electronic transmission as a defense to the formation of a Contract and each such Party forever waives any such defense.

6.08 Notices**.** Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail upon confirmation of receipt or, if receipt is not confirmed, delivery by another method permitted by this Section 6.08, (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case, to the respective Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Party.

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Notices to Service Provider:

c/o Brookfield Asset Management Inc.
250 Vesey Street, 15th Floor
New York, New York 10281
Attn: Murray Goldfarb
Email: murray.goldfarb@brookfield.com

and

c/o Simon Property Group Inc.
225 West Washington Street
Indianapolis, IN 46204
Attn: Steven E. Fivel
Email: sfivel@simon.com

with a copy to (which shall not constitute notice):
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Edward T. Ackerman
Brian S. Hermann
Robert B. Schumer
Email: eackerman@paulweiss.com
bhermann@paulweiss.com
rschumer@paulweiss.com

Notices to Recipient:

J. C. Penney Corporation, Inc.
6501 Legacy Drive
Plano, Texas 75024
Attention: Steve Panagos
Alan Carr
Email: steve.panagos@gmail.com
acarr@drivetrainllc.com

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with a copy to (which shall not constitute notice):

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Attention: Joshua A. Sussberg
Aparna Yenamandra
Tana Ryan
Steve Toth
Aisha Lavinier
Email: jsussberg@kirkland.com
aparna.yenamandra@kirkland.com
tryan@kirkland.com
steve.toth@kirkland.com
alavinier@kirkland.com

6.09 Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arising out of or related to this Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

6.10 Jurisdiction and Venue. Each of the Parties irrevocably agrees that any Action that may be based upon, arising out of, or related to this Agreement or the negotiation, execution or performance of this Agreement and the transactions contemplated hereby brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) if and only if the Bankruptcy Court is unwilling or unable to hear such Action, in the Delaware Chancery Court and any state court sitting in the State of Delaware to which an appeal from the Delaware Chancery Court may be validly taken (or, if the Delaware Chancery Court declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) ((a) and (b), the "Chosen Courts"), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties agrees not to commence any Action relating thereto except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any Order, decree or award rendered by any Chosen Court, and no Party will file a motion to dismiss any Action filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of forum non-conveniens. The Parties irrevocably agree that venue would be proper in any of the Chosen Courts, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of such Action. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 6.08. Nothing in this Agreement will affect the right of any Party to this Agreement to serve process in any other manner permitted by Law.

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6.11 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, THE DOCUMENTS AND AGREEMENTS CONTEMPLATED HEREBY AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION BASED ON, ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

6.12 Third Party Beneficiaries. Except as otherwise expressly provided in Section 6.13, nothing expressed or referred to in this Agreement will give, or will be construed to give, any Person other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

6.13 Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement may be made only against (and are expressly limited to) the Persons that are expressly identified as Parties hereto (the "Contracting Parties"). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or Debt Financing Source Related Party to, any of the foregoing ("Non-Party Affiliates"), shall have any Liability (whether in contract or in tort, in law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at Law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise,

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piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 6.13.

6.14 Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Person. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will in no way restrict or otherwise modify any of the terms or provisions hereof.

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

[*Signature page follows*]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

SERVICE PROVIDER

PENNEY BORROWER LLC

By: /s/ Brandy Treadway
Name: Brandy Treadway
Title: Secretary

[*Signature Page to Transition Services Agreement*]

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RECIPIENT

J. C. PENNEY CORPORATION, INC.

By: /s/ Bill Wafford
Name: Bill Wafford
Title: Chief Financial Officer

[*Signature Page to Transition Services Agreement*]

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Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
J. C. Penney Company, Inc.:

We consent to the use of our report dated March 20, 2020 with respect to the consolidated financial statements of J. C. Penney Company, Inc. as of February 1, 2020 and February 2, 2019 and for each of the years in the three-year period ended February 1, 2020 incorporated by reference herein. Our report on the consolidated financial statements refers to a change in accounting method as of February 3, 2019 for the adoption of Financial Accounting Standards Board' s Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842), as amended.

/s/ KPMG LLP

Dallas, Texas
December 29, 2020

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Exhibit 99.1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	)	Chapter 11
J. C. PENNEY COMPANY, INC., *et al.*,[1]	)	Case No. 20-20182 (DRJ)
Debtors.	)	(Jointly Administered)

AMENDED ORDER APPROVING THE DISCLOSURE STATEMENT FOR, AND CONFIRMING, THE AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF J. C. PENNEY COMPANY, INC. AND ITS DEBTOR AFFILIATES

The above-captioned debtors (collectively, the "Debtors") having:

a. commenced, on May 15, 2020 (the "Petition Date"), these Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code");

b. filed on May 15, 2020, the *Declaration of Bill Wafford, Executive Vice President, Chief Financial Officer of J. C. Penney Company, Inc., in Support of Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 25] (the "First Day Declaration"), detailing the facts and circumstances leading up to these Chapter 11 Cases;

c. served, on or before May 22, 2020, a notice of commencement (the "Notice of Commencement") on all known parties in interest, which informed recipients that the Debtors' commenced their Chapter 11 Cases on May 15, 2020;

d. filed, on June 9, 2020, the *Restructuring Support Agreement* [Docket No. 641, Exhibit A] (the "RSA");

e. filed, on October 20, 2020, the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing (A) Entry Into and Performance Under the Asset Purchase Agreement, (B) the Sale of the OpCo Acquired Assets and the PropCo Acquired Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (C) Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 1592] (the "Sale Motion");

1 A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://cases.primeclerk.com/JCPenney. The location of Debtor J. C. Penney Company, Inc.' s principal place of business and the Debtors' service address in these chapter 11 cases is 6501 Legacy Drive, Plano, Texas 75024.

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f. filed, on October 20, 2020, (i) the *Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 1591] (as modified, amended, or supplemented from time to time, the "Plan"), (ii) the *Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 1593] (the "Disclosure Statement"),[2] and (iii) the *Debtors' Emergency Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Plan and Disclosure Statement Objection and Related Procedures, (III) Approving the Solicitation Procedures, and (IV) Approving the Confirmation Hearing Notice* [Docket No. 1594] (the "Scheduling Motion");

g. distributed, on or around October 26, 2020, the Plan, the Disclosure Statement, notice of the Confirmation Hearing (the "Confirmation Hearing Notice"), and ballots for voting on the Plan (the "Ballots") to holders of Claims in Class 4 (First Lien Claims), Class 6 (Second Lien Notes Claims), Class 7 (Unsecured Notes Claims), and Class 8 (General Unsecured Claims) (collectively, the "Solicitation Packages") in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Local Rules");

h. served, on or about October 26, 2020, on all holders or potential holders of Claims in non-voting Classes the Confirmation Hearing Notice and the *Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan and Notice of Option to Opt Out of the Third-Party Releases* [Docket No. 1819, Exhibit H] (the "Non-Voting Status Notice") on all holders or potential holders of Claims and Interests in non-voting Classes, which (i) informed recipients of their status as holders or potential holders of Claims in non-voting Classes, (ii) provided the full text of the release, exculpation, and injunction provisions set forth in the Plan, (iii) included a form by which holders could elect to opt out of the Third-Party Release by checking a prominently featured and clearly labeled box (the "Opt-Out Form"), and (iv) enclosed a postage prepaid, return-addressed envelope in which holders could return their opt out elections to the Solicitation Agent;

i. published, on October 30, 2020, the publication notice of the Confirmation Hearing (the "Publication Notice," together with the Confirmation Hearing Notice and the Non-Voting Status Notice, the "Notices") in *The New York Times*, as evidenced by the *Affidavit of Publication for The New York Times* [Docket No. 1747] and in the *Houston Chronicle*, as evidenced by the *Affidavit of Publication for the Houston Chronicle* [Docket No. 1746] (together, the "Publication Affidavits");

---

2 Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Disclosure Statement, or the Bankruptcy Code (as defined herein), as applicable. The rules of interpretation set forth in Article I.B of the Plan apply.

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j. filed, on November 6, 2020, (i) *Declaration and Expert Report of David Kurtz in Support of the Confirmation of the Debtors' Proposed Plan of Reorganization* [Docket No. 1785, Exhibit A] (the "Kurtz Declaration"), and (ii) *Declaration and Expert Report of James A. Mesterharm in Support of Confirmation of the Debtors' Proposed Plan of Reorganization* [Docket No. 1785, Exhibit B] (the "Mesterharm Declaration," together with the Kurtz Declaration, the "Declarations");

k. filed, on November 8, 2020, the *Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates* [Docket No. 1788];

l. filed, on November 11, 2020, the *Affidavit of Service of Solicitation Materials* [Docket No. 1819] (together with all the exhibits thereto, the "Solicitation Materials Affidavit," and together with the Publication Affidavits, the "Affidavits");

m. filed, on November 12, 2020, the *Notice of Filing Plan Supplement for the Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 1831] (as modified, amended, or supplemented from time to time the "Plan Supplement" and which, for purposes of the Plan and this Confirmation Order, is included in the definition of the "Plan");

n. filed, on November 20, 2020, the *Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 1973];

o. filed, on November 21, 2020, the *Declaration of James Daloia of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 1984], which accounts for Ballots received up to the Voting Deadline (the "Original Voting Report");

p. filed, on November 21, 2020, the *Amended Declaration of James Daloia of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 1985] (together with the Original Voting Report, the "Voting Report");

q. filed, on November 23, 2020, the *Notice of Filing Amended Plan Supplement for the Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 2019];

r. filed, on November 23, 2020, the *Debtors' Memorandum of Law in Support of an Order Approving the Debtors' Disclosure Statement for, and Confirming, the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtors Affiliates* [Docket No. 2021] (the "Confirmation Brief");

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s. filed, on November 23, 2020, the *Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 2022];

t. filed, on December 12, 2020, the *Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 2162], attached hereto as **Exhibit A**; and

u. operated their businesses and managed their properties during these Chapter 11 Cases as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

THE COURT HAVING:

a. entered, on October 26, 2020, the *Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Disclosure Statement, (III) Establishing Plan and Disclosure Statement Objection and Related Procedures, (IV) Approving the Solicitation Procedures, and (V) Approving the Confirmation Hearing Notice* [Docket No. 1655] (the "Scheduling Order");

b. entered, on November 9, 2020, the *Order (I) Authorizing (A) Entry Into and Performance Under the Asset Purchase Agreement and (B) the Sale of the OpCo Acquired Assets and the PropCo Acquired Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (C) Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 1814] (the "Sale Order");

c. set November 24, 2020, at 9:00 a.m. (prevailing Central Time), as the date and time for the Confirmation Hearing, pursuant to sections 1125, 1126, 1128, and 1129 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018, as set forth in the Scheduling Order;

d. reviewed the Plan, the Disclosure Statement, the Scheduling Motion, the Plan Supplement, the Confirmation Brief, the Voting Report, the Declarations, the Confirmation Hearing Notice, the Solicitation Materials Affidavit, and all Filed pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and Confirmation, including all objections, statements, and reservations of rights;

e. considered the Restructuring Transactions incorporated and described in the Plan;

f. held the Confirmation Hearing;

g. heard the statements and arguments made by counsel in respect of approval of the Disclosure Statement and Confirmation;

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h. considered all oral representations, testimony, documents, filings, and other evidence regarding approval of the Disclosure Statement and Confirmation; and

i. taken judicial notice of all pleadings and other documents Filed, all orders entered, and all evidence and arguments presented in these Chapter 11 Cases.

NOW, THEREFORE, it appearing to the Court that notice of the Confirmation Hearing and the opportunity for any party in interest to object to approval of the Disclosure Statement and Confirmation having been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby, and the legal and factual bases set forth in the documents Filed in support of approval of the Disclosure Statement and Confirmation and other evidence presented at the Confirmation Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Court makes and issues the following findings of fact and conclusions of law, and orders:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:

A. Findings and Conclusions.

1. The findings and conclusions set forth herein and in the record of the Confirmation Hearing constitute the Court' s findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

B. Jurisdiction, Venue, and Core Proceeding.

2. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Consideration of whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code.

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C. Eligibility for Relief.

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

D. Commencement and Joint Administration of these Chapter 11 Cases.

4. On the Petition Date, each of the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code. In accordance with the *Order Directing Joint Administration of Chapter 11 Cases* [Docket No. 4], these Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. Since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases. On May 28, 2020, a statutory committee of unsecured creditors (the "Committee") was appointed pursuant to section 1102 of the Bankruptcy Code in these Chapter 11 Cases [Docket No. 329].

E. Modifications to the Plan.

5. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan described or set forth in this Confirmation Order constitute technical or clarifying changes, changes with respect to particular Claims by agreement with holders of such Claims, or modifications that do not otherwise materially and adversely affect or change the treatment of any other Claim or Interest under the Plan. Notice of these modifications was adequate and appropriate under the facts and circumstances of these Chapter 11 Cases. In accordance with Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, and

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they do not require that holders of Claims in Voting Classes (as defined herein) be afforded an opportunity to change previously cast acceptances or rejections of the Plan. Accordingly, the Plan is properly before this Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

F. Burden of Proof–Confirmation of the Plan.

6. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for confirmation of the Plan. In addition, and to the extent applicable, the Plan is confirmable under the clear and convincing evidentiary standard.

G. Notice.

7. As evidenced by the Affidavits and the Voting Report, the Debtors provided due, adequate, and sufficient notice of the commencement of these Chapter 11 Cases, the Disclosure Statement, the Plan, the Confirmation Hearing, and the opportunity to opt out of the Third-Party Release, together with all deadlines for voting to accept or reject the Plan as well as objecting to the Disclosure Statement and the Plan to all bondholders of record, the full creditor matrix, the Core/2002 list, and all equity holders of record. Further, the Confirmation Hearing Notice was published in *The New York Times* and the *Houston Chronicle* on October 30, 2020 in compliance with Bankruptcy Rule 2002(I). Such notice was adequate and sufficient under the facts and circumstances of these Chapter 11 Cases in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and the Scheduling Order. No other or further notice is or shall be required.

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H. Disclosure Statement.

8. The Disclosure Statement contains (a) sufficient information of a kind necessary to satisfy the disclosure requirements of all applicable nonbankruptcy laws, rules, and regulations, including the Securities Act, and (b) "adequate information" (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein. The filing of the Disclosure Statement with the clerk of the Court satisfied Bankruptcy Rule 3016(b).

I. Ballots.

9. The Classes of Claims entitled to vote under the Plan to accept or reject the Plan (the "Voting Classes") are set forth below:

Class	Designation
4	First Lien Claims
6	Second Lien Notes Claims
7	Unsecured Notes Claims
8	General Unsecured Claims

10. The form of Ballots attached to the Scheduling Order as Exhibit 4A, Exhibit 4B, Exhibit 4C, and Exhibit 4D that the Debtors used to solicit votes to accept or reject the Plan from holders of Claims in the Voting Classes adequately addressed the particular needs of these Chapter 11 Cases and were appropriate for holders in the Voting Classes to vote to accept or reject the Plan.

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J. Solicitation.

11. As described in the Voting Report, the solicitation of votes on the Plan complied with the solicitation procedures set forth in Article VIII of the Disclosure Statement (the "Solicitation Procedures"), was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any other applicable rules, laws, and regulations, including the registration requirements under the Securities Act.

12. As described in the Voting Report and the Solicitation Materials Affidavit, as applicable, on October 26, 2020, the Solicitation Packages were transmitted and served, including to all holders of Claims in the Voting Classes, in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Bankruptcy Local Rules, the Scheduling Order, and any applicable nonbankruptcy law. Transmission and service of the Solicitation Packages were timely, adequate, and sufficient under the facts and circumstances of these Chapter 11 Cases. No further notice of the documents included in the Solicitation Packages was required.

13. As set forth in the Voting Report, the Solicitation Packages were distributed to holders in the Voting Classes that held a Claim in such class as of October 19, 2020 (the "Voting Record Date"). The establishment and notice of the Voting Record Date were reasonable and sufficient.

14. The period during which the Debtors solicited acceptances or rejections to the Plan was a reasonable and sufficient period of time for each holder in the Voting Classes to make an informed decision to accept or reject the Plan.

15. Under section 1126(f) of the Bankruptcy Code, holders of Claims in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), and Class 3 (ABL Claims and Secured Swap Claims) (collectively, the "Unimpaired Classes") are Unimpaired and conclusively presumed to have accepted the Plan. Holders of Claims and Interests in Class 9 (Intercompany Claims) and

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Class 10 (Intercompany Interests) (the "Deemed Accepting/Rejecting Classes") are Unimpaired and conclusively presumed to have accepted the Plan (to the extent reinstated) or are Impaired and deemed to reject the Plan (to the extent cancelled), and, in either event, are not entitled to vote to accept or reject the Plan. Holders of Claims and Interests in Class 11 (Existing Equity Interests) and Class 12 (Section 510(b) Claims) (the "Deemed Rejecting Classes" and, together with the Unimpaired Classes and the Deemed Accepting/Rejecting Classes, the "Non-Voting Classes") are Impaired and deemed to reject the Plan.

16. Nevertheless, the Debtors served the Confirmation Hearing Notice on the entire creditor matrix. The Confirmation Hearing Notice adequately summarized the material terms of the Plan, including classification and treatment of Claims and the release, exculpation, and injunction provisions of the Plan. Further, because the Opt-Out Form was included in both the Ballots and the Non-Voting Status Notice, every known stakeholder, including unimpaired creditors and equity holders, was provided with the means by which they can opt out of the Third-Party Release, including pre-addressed prepaid return envelopes.

K. Voting.

17. As evidenced by the Voting Report, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Disclosure Statement, and any applicable nonbankruptcy law, rule, or regulation.

L. Plan Supplement.

18. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the filing and notice of such documents are good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, and all other applicable rules, laws, and requirements, and no other or further notice is required. All documents included

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in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan, and only consistent therewith, the Debtors reserve the right to alter, amend, update, or modify the Plan Supplement before the Effective Date. The Core Notice Parties[3] and holders of Claims and Interests were provided due, adequate, and sufficient notice of the Plan Supplement.

M. Compliance with Bankruptcy Code Requirements–Section 1129(a)(1).

19. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code. In addition, the Plan is dated and identifies the Entities submitting it, thereby satisfying Bankruptcy Rule 3016(a).

(i) *Proper Classification–Sections 1122 and 1123.*

20. The Plan satisfies the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code. Article III of the Plan provides for the separate classification of Claims and Interests into twelve Classes. Valid business, factual, and legal reasons exist for the separate classification of such Classes of Claims and Interests. The classifications reflect no improper purpose and do not unfairly discriminate between, or among, holders of Claims or Interests. Each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class.

3 The term "Core Notice Parties" refers to the following: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Committee; (d) Otterbourg P.C., as counsel to Wells Fargo Bank, N.A., administrative agent under the Debtors' revolving credit facility; (e) JPMorgan Chase Bank, N.A., as administrative agent under the Debtors' term loan facility; (f) Wilmington Trust, N.A., as indenture trustee under the Debtors' (i) 5.875% first lien secured notes due 2023, (ii) 8.625% second lien secured notes due 2025, (iii) 5.65% unsecured notes due 2020, (iv) 7.125% unsecured notes due 2023, (v) 6.90% unsecured notes due 2026, (vi) 6.375% unsecured notes due 2036, (vii) 7.40% unsecured notes due 2037, and (viii) 7.625% unsecured notes due 2097; (g) Milbank LLP, as counsel to the ad hoc group of certain first lien creditors; (h) counsel to the Ad Hoc Equity Committee; (i) the United States Attorney' s Office for the Southern District of Texas; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (m) the state attorneys general for states in which the Debtors conduct business; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002.

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(ii) *Specified Unimpaired Classes–Section 1123(a)(2).*

21. The Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code. Article III of the Plan specifies that Claims, as applicable, in the following Classes are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code:

Class	Claims and Interests
1	Other Priority Claims
2	Other Secured Claims
3	ABL Claims and Secured Swap Claims
9	Intercompany Claims
10	Intercompany Interests

22. For the avoidance of doubt, holders of Intercompany Claims and Intercompany Interests are Unimpaired and conclusively presumed to have accepted the Plan, or are Impaired and deemed to reject the Plan, and, in either event, are not entitled to vote to accept or reject the Plan. Additionally, Article II of the Plan specifies that Allowed Administrative Claims, Professional Fee Claims, and Priority Tax Claims will be paid in full in accordance with the terms of the Plan, although these Claims are not classified under the Plan as contemplated by section 1123(a)(1) of the Bankruptcy Code.

(iii) *Specified Treatment of Impaired Classes–Section 1123(a)(3).*

23. The Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code. Article III of the Plan specifies that Claims and Interests, as applicable, in the following Classes (the "Impaired Classes") are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code, and describes the treatment of such Classes:

Class	Claims and Interests
4	First Lien Claims
6	Second Lien Notes Claims
7	Unsecured Notes Claims
8	General Unsecured Claims

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Class	Claims and Interests
9	Intercompany Claims
10	Intercompany Interests
11	Existing Equity Interests
12	Section 510(b) Claims

24. For the avoidance of doubt, holders of Intercompany Claims and Intercompany Interests are Unimpaired and conclusively presumed to have accepted the Plan, or are Impaired and deemed to reject the Plan, and, in either event, are not entitled to vote to accept or reject the Plan.

(iv) *No Discrimination—Section 1123(a)(4).*

25. The Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest.

(v) *Adequate Means for Plan Implementation—Section 1123(a)(5).*

26. The Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code. The provisions in Article IV and elsewhere in the Plan, and in the exhibits and attachments to the Plan and the Disclosure Statement, provide, in detail, adequate and proper means for the Plan' s implementation, including regarding: (a) the general settlement of Claims and Interests; (b) authorization for the Debtors and/or Wind-Down Debtors to take all actions necessary to effectuate the Plan, including those actions necessary to effect the Restructuring Transactions, including, without limitation, any restructuring transaction steps set forth in the Restructuring Transactions Memorandum, as the same may be modified or amended from time to time prior to the Effective Date; (c) the Definitive Documents; (d) the adoption of the New Organizational Documents; (e) the funding and sources of consideration for the Plan distributions; (f) the vesting of assets in the Wind-Down Debtors; (g) cancellation of existing securities and agreements; (h) the authorization and approval of corporate actions under the Plan and consistent with RSA; (i) the creation of the Professional Fee Escrow Account; and (j) the effectuation and implementation of documents and further transactions.

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(vi) *Voting Power of Equity Securities—Section 1123(a)(6).*

27. The Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code. In accordance with Article IV.H of the Plan, the New Organizational Documents will prohibit the issuance of non-voting Interests to the extent required by section 1123(a)(6) of the Bankruptcy Code.

(vii) *Directors and Officers—Section 1123(a)(7).*

28. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. Article IV.D.4 of the Plan discharges all of the Debtors' existing board of directors or managers, as applicable effective as of the Effective Date without any further action. In addition, Article IV.D provides that the Plan Administrator shall be appointed as the sole manager, sole director, and sole officer of the Wind-Down Debtors and shall succeed to the powers of the Wind-Down Debtors' managers, directors, and officers. The manner for selection of the Plan Administrator is set forth in the Plan.

(viii) *Impairment / Unimpairment of Classes—Section 1123(b)(1).*

29. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Article III of the Plan impairs or leaves Unimpaired each Class of Claims and Interests.

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(ix) *Assumption–Section 1123(b)(2).*

30. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article V of the Plan provides that, subject to the Sale Order (including the Assignment Procedures (as defined in the Sale Order)) all Executory Contracts or Unexpired Leases not otherwise assumed or rejected will be deemed automatically rejected by the applicable Debtor or Wind-Down Debtor, as applicable, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than those that are: (a) identified on the Schedule of Assigned Contracts or the Potentially Assigned Contracts List (as defined in the Sale Order); (b) have been previously assumed or rejected by the Debtors pursuant to the Assignment Procedures or any other Court order; (c) are the subject of a Filed motion to assume, assume and assign, or reject such Executory Contract or Unexpired Lease (or of a Filed objection with respect to the proposed assumption and assignment of such contract) that is pending on the Effective Date; or (d) are a contract, release, or other agreement or document entered into in connection with the Plan.

(x) *Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action–Section 1123(b)(3).*

31. In accordance with section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, discharged, satisfied, or otherwise resolved pursuant to the Plan. In addition, the compromises and settlements embodied in the Plan and the negotiated support in the RSA preserve value by enabling the Debtors to avoid extended, value-eroding litigation that could delay the Debtors' emergence from chapter 11. The parties to the RSA have provided significant value to the Debtors and their Estates, and the compromises and settlements in the Plan are fair, equitable, reasonable, and in the best interests of the Debtors and their Estates.

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32. Article X.C of the Plan describes certain releases granted by the Debtors (the "Debtor Release"). The Debtors have satisfied the business judgment standard with respect to the propriety of the Debtor Release. Such release is a necessary and integral element of the Plan, and is fair, reasonable, and in the best interests of the Debtors, the Estates, and holders of Claims and Interests. Also, the Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good-faith settlement and compromise of the Claims released by the Debtor Release; (c) given, and made, after due notice and opportunity for hearing; and (d) a bar to any of the Debtors asserting any Claim or Cause of Action released by the Debtor Release.

33. The Debtor Release appropriately offers protection to parties that participated in the Debtors' restructuring process. Each of the Released Parties made significant concessions and contributions to these Chapter 11 Cases. The Debtor Release for the Debtors' current and former directors and officers is appropriate because the Debtors' directors and officers share an identity of interest with the Debtors, supported the Plan and these Chapter 11 Cases, actively participated in meetings and negotiations leading up to and during these Chapter 11 Cases, and have provided other valuable consideration to the Debtors to facilitate the Debtors' reorganization.

34. The scope of the Debtor Release is appropriately tailored under the facts and circumstances of the Chapter 11 Cases. The Debtor Release is appropriate in light of, among other things, the value provided by the Released Parties to the Debtors' Estates and the critical nature of the Debtor Release to the Plan.

35. Article X.D of the Plan describes certain releases granted by the Releasing Parties (the "Third-Party Release"). The Third-Party Release is an integral part of the Plan. Like the Debtor Release, the Third-Party Release facilitated participation in the RSA, the Sale Transaction, the DIP Facility, the Plan, and the chapter 11 process generally. The Third-Party Release was a critical and integral component of the RSA and the creditors' agreement to support the Plan, the DIP Facility, and the Sale Transaction, thereby preventing significant and time-consuming litigation regarding the parties' respective rights and interests. The Third-Party Release appropriately offers certain protections to parties who constructively participated in the Debtors' restructuring process by, among other things, supporting the Plan.

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36. The Third-Party Release is consensual as to all parties in interest, including all Releasing Parties, and such parties in interest were provided notice of the chapter 11 proceedings, the Plan, the deadline to object to confirmation of the Plan, and received the Confirmation Hearing Notice and the Non-Voting Status Notice, and were properly informed that the holders of Claims against or Interests in the Debtors that did not check the "Opt Out" box on the applicable Ballot or Opt-Out Form and return it in advance of the Voting Deadline would be deemed to have expressly, unconditionally, generally, individually, and collectively consented to the release and discharge of all Claims and Causes of Action against the Debtors and the Released Parties. Additionally, the release provisions of the Plan were conspicuous, emphasized with boldface type in the Plan, the Disclosure Statement, the Ballots, and the Notices. Further, members of a non-Voting Class and recipients of the Notices also received a pre-addressed prepaid return envelope to facilitate the submission of any opt out election.

37. The Third-Party Release provides finality for the Debtors, the Wind-Down Debtors, and the Released Parties regarding the parties' respective obligations under the Plan and with respect to the Wind-Down Debtors. The Confirmation Hearing Notice sent to holders of Claims and Interests and published in *The New York Times* and the *Houston Chronicle* on October 30, 2020 and the Ballots sent to all holders of Claims entitled to vote on the Plan, in each case, unambiguously stated that the Plan contains the Third-Party Release. Such release is a necessary and integral element of the Plan, and is fair, equitable, reasonable, and in the best interests of the Debtors, the Estates, and all holders of Claims and Interests. Also, the Third-Party

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Release is: (a) specific in language and scope; (b) given in exchange for the good and valuable consideration provided by the Released Parties; (c) a good faith settlement and compromise of the claims released by the Third-Party Release; (d) in the best interests of the Debtors and all holders of Claims and Interests; (e) fair, equitable, and reasonable; (f) given and made after due notice and opportunity for hearing; and (g) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to the Third-Party Release.

38. The exculpation, described in Article X.E of the Plan (the "Exculpation"), is appropriate under applicable law because it was proposed in good faith, was formulated following extensive good-faith, arm' s-length negotiations with key constituents, and is appropriately limited in scope. Without limiting anything in the Exculpation, and except as otherwise specifically provided in the Plan, each Exculpated Party has participated in these Chapter 11 Cases in good faith and is appropriately released and exculpated from any obligation (other than obligations under the Plan, the Plan Supplement, and this Confirmation Order), Cause of Action, or liability for any prepetition or postpetition act taken or omitted to be taken in connection with, relating to, or arising out of the Debtors' restructuring efforts, the RSA, the Asset Purchase Agreement, the Disclosure Statement, the Plan, the Plan Supplement, other Definitive Documents, the Confirmation Order, or any Restructuring Transaction, contract, instrument, release, or other agreement or document contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order, or created or entered into in connection with the RSA, the Asset Purchase Agreement, the Disclosure Statement, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of the Sale Transaction, the administration and implementation of the Plan, including the issuance of any securities pursuant to the Plan or the distribution of property under the Plan or any other related agreement, and the implementation of the Sale

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Transaction and the Restructuring Transactions contemplated by the Plan (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or this Confirmation Order in lieu of such legal opinion), or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors or the Wind-Down Debtors, except for Claims related to any act or omission that is determined by Final Order to have constituted actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpation, including its carve-out for actual fraud, gross negligence, or willful misconduct, is consistent with established practice in this jurisdiction and others.

39. The injunction provision set forth in Article X.F of the Plan is necessary to implement, preserve, and enforce the Debtors' discharge, the Debtor Release, the Third-Party Release, and the Exculpation, and is narrowly tailored to achieve this purpose.

40. Pursuant to Article IV.L of the Plan and in accordance with section 1123(b)(3)(B) of the Bankruptcy Code, but subject to Article X of the Plan, the Plan Administrator shall retain and may enforce all Causes of Action of the Debtors, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action and notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan, other than Avoidance Actions and the Causes of Action (a) that constitute OpCo Acquired Assets or PropCo Acquired Assets, (b) released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article X, or

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(c) waived in accordance with Article IV.L which in the case of the foregoing (b) or (c) shall be deemed released and waived by the Debtors and the Wind-Down Debtors as of the Effective Date, and the Wind-Down Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The provisions regarding the preservation of Causes of Action in the Plan, including the Plan Supplement, are appropriate, fair, equitable, and reasonable, and are in the best interests of the Debtors, the Estates, and holders of Claims and Interests.

41. The release and discharge of all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates described in Article IV.E of the Plan (the "Lien Release") is necessary to implement the Plan. The provisions of the Lien Release are appropriate, fair, equitable, and reasonable and are in the best interests of the Debtors, the Estates, and holders of Claims and Interests.

(xi) *Additional Plan Provisions–Section 1123(b)(6).*

42. The other discretionary provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.

(xii) *Cure of Defaults –Section 1123(d).*

43. The Plan complies with section 1123(d) of the Bankruptcy Code. Article V.C of the Plan provides for the satisfaction of Cure Costs associated with each Executory Contract and Unexpired Lease to be assumed in accordance with section 365(b)(1) of the Bankruptcy Code. The Debtors or the Wind-Down Debtors, as applicable, shall pay the Cure Costs, if any, on the Effective Date or promptly as reasonably practicable thereafter, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may agree; *provided* that the Cure Costs in connection with the Assigned Contracts shall be satisfied in accordance with the terms in the

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Asset Purchase Agreement and the Sale Order (including the Assignment Procedures). In the event of a dispute regarding (a) the amount of any payments to cure such a default, (b) the ability of the Debtors, the Purchaser Group, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (c) any other matter pertaining to assumption, any such dispute shall be resolved and Cure Costs paid as set forth in the Sale Order (including the Assignment Procedures) or Confirmation Order. As such, the Plan provides that the Debtors will cure, or provide adequate assurance that the Debtors will promptly cure, defaults with respect to assumed Executory Contracts and Unexpired Leases in accordance with section 365(b)(1) of the Bankruptcy Code. On October 27, 2020, the Debtors filed the *Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Costs* [Docket No. 1666], and on October 30, 2020, the Debtors filed the *Correction of Notice of Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and Cure Costs* [Docket No. 1709]. As soon as was reasonably practicable thereafter, the Debtors served sufficient notice on the counterparties to the Assumed Executory Contracts and Unexpired Leases in accordance with the Assignment Procedures. Thus, the Plan complies with section 1123(d) of the Bankruptcy Code.

N. Debtor Compliance with the Bankruptcy Code−Section 1129(a)(2).

44. The Debtors have complied with the applicable provisions of the Bankruptcy Code and, thus, satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

a. is an eligible debtor under section 109 of the Bankruptcy Code, and a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code;

b. has complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court; and

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c. complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, the Bankruptcy Local Rules, any applicable nonbankruptcy law, rule and regulation, the Scheduling Order, and all other applicable law, in transmitting the Solicitation Packages, and related documents and notices, and in soliciting and tabulating the votes on the Plan.

O. Plan Proposed in Good Faith−Section 1129(a)(3).

45. The Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Court has examined the totality of the circumstances surrounding the filing of these Chapter 11 Cases, the Plan, the RSA, the process leading to Confirmation, including the overwhelming support of holders of Claims for the Plan, and the transactions to be implemented pursuant thereto. These Chapter 11 Cases were Filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to implement the Restructuring Transactions.

46. The Plan is the product of good faith, arm' s-length negotiations by and among the Debtors, the ABL Lenders, the First Lien Lenders, the Committee, and the Purchasers, among others. The Plan itself and the process leading to its formulation provides independent evidence of the Debtors' and such other parties' good faith, serves the public interest, and assures fair treatment of holders of Claims and Interests. Consistent with the overriding purpose of chapter 11, the Debtors filed the Chapter 11 Cases with the belief that the Debtors were in need of reorganization, and the Plan was negotiated and proposed with the intention of accomplishing a successful reorganization and maximizing stakeholder value and for no ulterior purpose. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code are satisfied.

P. Payment for Services or Costs and Expenses−Section 1129(a)(4).

47. The procedures set forth in the Plan for the Court' s review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

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Q. Directors, Officers, and Insiders–Section 1129(a)(5).

48. To the extent section 1129(a)(5) of the Bankruptcy Code applies to the Wind-Down Debtors, the Debtors have satisfied the requirements of this provision by, among other things, disclosing the identity and terms of compensation of the Plan Administrator.

R. No Rate Changes–Section 1129(a)(6).

49. Section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and therefore will not require governmental regulatory approval.

S. Best Interest of Creditors–Section 1129(a)(7).

50. The Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis attached as Article IX to the Disclosure Statement and the other evidence related thereto in support of the Plan that was proffered or adduced at, prior to, or in affidavits filed in connection with the Confirmation Hearing: (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that holders of Allowed Claims and Interests in each Class will recover at least as much under the Plan on account of such Claim or Interest, as of the Effective Date, as such holder would receive if the Debtors were liquidated, on the Effective Date, under chapter 7 of the Bankruptcy Code.

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T. Acceptance by Certain Classes−Section 1129(a)(8).

51. The Plan satisfies the requirements of section 1129(a)(8) of the Bankruptcy Code. Classes 1, 2, and 3 constitute Unimpaired Classes, each of which is conclusively presumed to have accepted the Plan in accordance with section 1126(f) of the Bankruptcy Code. The Voting Classes, Classes 4, 6, 7, and 8 have all voted to accept the Plan. Holders of Claims and Interests in Classes 9 and 10 are Unimpaired and conclusively presumed to have accepted the Plan (to the extent Reinstated) or are Impaired and deemed to reject the Plan (to the extent cancelled), and, in either event, are not entitled to vote to accept or reject the Plan. Holders of Claims and Interests in Classes 11 and 12 receive no recovery on account of their Claims or Interests pursuant to the Plan and are deemed to have rejected the Plan.

U. Treatment of Claims Entitled to Priority Under Section 507(a) of the Bankruptcy Code−Section 1129(a)(9).

52. The treatment of Allowed Administrative Claims, Professional Fee Claims, and Priority Tax Claims under Article II of the Plan, and of Other Priority Claims under Article III of the Plan, satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code.

V. Acceptance by At Least One Impaired Class−Section 1129(a)(10).

53. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced by the Voting Report, the Voting Classes, each of which is impaired, voted to accept the Plan by the requisite numbers and amounts of Claims and Interests, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code), specified under the Bankruptcy Code.

W. Feasibility−Section 1129(a)(11).

54. The Plan satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code. The evidence in support of the Plan that was proffered or adduced at, prior to, or in affidavits filed in connection with the Confirmation Hearing: (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) have not been controverted by other evidence; and (c) establish that the Plan is feasible and that the Wind-Down Debtors will have sufficient funds available to meet their obligations under the Plan.

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X. Payment of Fees−Section 1129(a)(12).

55. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Article XIV.C of the Plan provides for the payment of all fees payable by the Debtors under 28 U.S.C. § 1930(a).

Y. Non-Applicability of Certain Sections−Sections 1129(a)(14), (15), and (16).

56. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not nonprofit corporations.

Z. Only One Plan−Section 1129(c).

57. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan Filed in each of these Chapter 11 Cases.

AA. Principal Purpose of the Plan−Section 1129(d).

58. No Governmental Unit has requested that the Court refuse to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. As evidenced by its terms, the principal purpose of the Plan is not such avoidance. Accordingly, the requirements of section 1129(d) of the Bankruptcy Code have been satisfied.

BB. Good Faith Solicitation−Section 1125(e).

59. The Debtors and their agents have solicited and tabulated votes on the Plan and have participated in the activities described in section 1125 of the Bankruptcy Code fairly, in good faith within the meaning of section 1125(e), and in a manner consistent with the Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws, and regulations and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the Exculpation provisions set forth in Article X.E of the Plan.

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60. The Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties nor individuals nor the Wind-Down Debtors will have any liability for the violation of any applicable Law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan and any previous plan.

CC. Satisfaction of Confirmation Requirements.

61. Based on the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code.

DD. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.

62. Each of the conditions precedent to the Effective Date, as set forth in Article XI.A of the Plan, has been or is reasonably likely to be satisfied or waived in accordance with Article XI.B of the Plan.

EE. Implementation.

63. All documents necessary to implement the Plan and all other relevant and necessary documents have been negotiated in good faith and at arm' s-length and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal or state law.

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FF. Good Faith.

64. The Debtors and their respective directors, officers, management, counsel, advisors, and other agents have proposed the Plan in good faith, with the legitimate and honest purpose of maximizing the value of the Debtors' Estates for the benefit of their stakeholders. The Plan accomplishes this goal. Accordingly, the Debtors or the Wind-Down Debtors, as appropriate, and their respective officers, directors, and advisors have been, are, and will continue to act in good faith if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby; and (b) take the actions authorized and directed by this Confirmation Order and the Plan to effectuate the Restructuring Transactions.

ORDER

IT IS ORDERED, ADJUDGED, DECREED, AND DETERMINED THAT:

65. **Disclosure Statement.** The Disclosure Statement is approved in all respects.

66. **Ballots.** The forms of Ballots attached to the Scheduling Order as Exhibit 4A (Form of Master Ballot), Exhibit 4B (Form of Beneficial Holder Ballot), Exhibit 4C (Form of Ballot for First Lien Claims (Term Loan Claims) and General Unsecured Claims), and Exhibit 4D (Form of Class 8B Ballot) are approved.

67. **Solicitation Procedures.** The Solicitation Procedures utilized by the Debtors for distribution of the Solicitation Packages, as set forth in the Disclosure Statement, the Scheduling Motion, the Confirmation Brief, and the Voting Report, in soliciting acceptances and rejections of the Plan satisfy the requirements of the Bankruptcy Code and the Bankruptcy Rules and are approved.

68. **Notices.** The Notices are deemed to be sufficient and appropriate under the circumstances. The form of the Confirmation Hearing Notice attached as Exhibit 2 to the Scheduling Order, the Non-Voting Status Notice, substantially in the form attached as Exhibit 6 to the Scheduling Order, and service thereof, and the Publication Notice and publication thereof, comply with the requirements of the Bankruptcy Code and the Bankruptcy Rules and are approved.

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69. **Confirmation of the Plan.** The Plan is approved in its entirety and CONFIRMED under section 1129 of the Bankruptcy Code. The terms of the Plan, including the Plan Supplement, are incorporated by reference into and are an integral part of this Confirmation Order.

70. **Objections.** All objections and all reservations of rights pertaining to approval of the Disclosure Statement and Confirmation of the Plan that have not been withdrawn, waived, or settled are overruled on the merits.

71. **Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims and Interests who voted to accept the Plan or who are conclusively presumed to accept the Plan are deemed to have accepted the Plan.

72. **No Action Required.** Under the provisions of the Delaware General Corporation Law, including section 303 thereof, and the comparable provisions of the Delaware Limited Liability Company Act, and the Texas Business Organizations Code, including section 101.606 thereof, and section 1142(b) of the Bankruptcy Code, no action of the respective directors, equity holders, managers, or members of the Debtors is required to authorize the Debtors to enter into, execute, deliver, File, adopt, amend, restate, consummate, or effectuate, as the case may be, the Plan, the Restructuring Transactions, and any contract, assignment, certificate, instrument, or other document to be executed, delivered, adopted, or amended in connection with the implementation of the Plan, including the appointment of the Plan Administrator.

73. **Binding Effect.** Subject to Article XI.A of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan (including, for the avoidance of doubt, the documents and instruments

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contained in the Plan Supplement) shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Debtors, any and all holders of Claims or Interests (irrespective of whether holders of such Claims or Interests have, or are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

74. **Vesting of Assets.** Except as otherwise provided in the Plan, or any agreement, instrument, or other document incorporated herein or therein, on the Effective Date, the Excluded Assets (as defined in the Asset Purchase Agreement) shall vest in the Wind-Down Debtors for the purpose of liquidating the Estates, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, the Wind-Down Debtors may, at the direction of the Plan Administrator, and subject to the Asset Purchase Agreement, the Sale Order, and the Confirmation Order, use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

75. **Continued Existence of Wind-Down Debtors.** On and after the Effective Date, the Wind-Down Debtors shall continue in existence for purposes of (a) resolving Disputed Claims, (b) making distributions on account of Allowed Claims as provided hereunder, (c) establishing and funding the Administrative / Priority Claims Reserve and the Wind-Down Reserve, (d) enforcing and prosecuting Claims, interests, rights, and privileges under the Causes of Action on the Schedule of Retained Causes of Action in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith, (e) filing appropriate tax returns, (f) complying with its continuing

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obligations under the Asset Purchase Agreement, if any, (g) liquidating all assets of the Wind-Down Debtors, and (h) otherwise administering the Plan. The Wind-Down Debtors shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (i) motions, contested matters, and adversary proceedings pending in this Court and (ii) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of this Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

76. **The Plan Administrator.** The Plan Administrator shall act for the Wind-Down Debtors in the same fiduciary capacity as applicable to a board of managers, directors, and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same) and retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under the Plan in accordance with the Wind-Down and as otherwise provided in the Confirmation Order. On the Effective Date, the authority, power, and incumbency of the Persons acting as managers, directors, and officers of the Wind-Down Debtors shall be deemed to have resigned, and the Plan Administrator shall be appointed as the sole manager, sole director, and sole officer of the Wind-Down Debtors, and shall succeed to the powers of the Wind-Down Debtors' managers, directors, and officers.

77. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Wind-Down Debtors as further described in Article VII of the Plan. The Plan Administrator shall have the authority to sell, liquidate, or otherwise dispose of any and all of the Wind-Down Debtors' assets without any additional notice to or approval from the Court.

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78. **Corporate Action.** All actions contemplated under the Plan, regardless of whether taken before, on, or after the Effective Date, shall be deemed authorized and approved in all respects, including: (a) selection of the Plan Administrator; (b) implementation of the Restructuring Transactions; and (c) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan or deemed necessary or desirable by the Debtors, before, on, or after the Effective Date involving the corporate structure of the Debtors or the Wind-Down Debtors, and any corporate action required by the Debtors or the Wind-Down Debtors in connection with the Plan or corporate structure of the Debtors or the Wind-Down Debtors shall be deemed to have occurred and shall be in effect on the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Plan Administrator. Before, on, or after the Effective Date, the appropriate officers of the Debtors or the Plan Administrator, as applicable, shall be authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Debtors or the Wind-Down Debtors, to the extent not previously authorized by the Court. The authorizations and approvals contemplated by Article IV.G of the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

79. **Restructuring Transactions**. The Debtors or Wind-Down Debtors, as applicable, are authorized take all actions set forth in the Plan, and enter into any transaction and take any reasonable actions as may be necessary or appropriate to effectuate the Restructuring Transactions, subject in all respects to the terms set forth in the Plan, including, as applicable: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance,

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dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable law and any other terms to which the applicable Entities may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable Entities agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable state or provincial Law; and (d) all other actions that the Debtors and the Purchasers determine to be necessary or appropriate in connection with the Consummation of the Plan, including, among other things, making filings or recordings that may be required by applicable law in connection with the Plan and authorizing and directing the Term Loan/First Lien Notes Collateral Agent to effectuate the Credit Bid in accordance with the Asset Purchase Agreement and Sale Order and any assignees of the Credit Bid, if applicable, are bound by the terms and provisions of the direction to the Term Loan/First Lien Notes Collateral Agent including, among other things, the Credit Bid Distributions and Credit Bid Pro Rata.

80. **Cancellation of Existing Securities and Agreements.** On the Effective Date, except as otherwise specifically provided for herein, in the Plan, or the Asset Purchase Agreement: (a) the obligations under the DIP Credit Documents, First Lien Debt Documents, the ABL Credit Agreement, and any other certificate, Security, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors or giving rise to any Claim or Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Debtors that are Reinstated pursuant to

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the Plan) shall be cancelled, except as set forth in the Plan, and the Wind-Down Debtors shall not have any continuing obligations thereunder; and (b) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligation of or ownership interest in the Debtors that are specifically Reinstated pursuant to the Plan) shall be released.

81. Notwithstanding the foregoing, (a) no Executory Contract or Unexpired Lease (i) that has been, or will be, assumed pursuant to section 365 of the Bankruptcy Code or (ii) relating to a Claim that was paid in full prior to the Effective Date, shall be terminated or cancelled on the Effective Date, and (b) the First Lien Debt Documents and the ABL Credit Agreement shall continue in effect solely for the purpose of (i) allowing Holders of the First Lien Claims and ABL Claims, as applicable, to receive the distributions provided for under the Plan, (ii) allowing the Term Loan Administrative Agent, the Term Loan/First Lien Notes Collateral Agent, and the ABL Agent to receive or direct distributions from the Debtors and to make further distributions to the Holders of such Claims on account of such Claims, as set forth in Article VI.A of the Plan, (iii) preserving all rights, including rights of enforcement, of the Term Loan Administrative Agent, the First Lien Notes Trustee, the Term Loan/First Lien Notes Collateral Agent, and the ABL Agent to indemnification or contribution pursuant and subject to the terms of the ABL Credit Agreement and Term Loan Credit Agreement in respect of any Claim or Cause of Action asserted against the Term Loan Administrative Agent, and the First Lien Notes Indenture Trustee, as applicable,

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(iv) permitting each of the Term Loan/First Lien Notes Collateral Agent, ABL Agent and the Term Loan Administrative Agent to appear in the Chapter 11 Cases or in any proceeding in this Court, and (v) preserving any rights of the DIP Agent, DIP Collateral Agent, First Lien Notes Trustee, Term Loan Administrative Agent, Term Loan/First Lien Notes Collateral Agent, Unsecured Notes Trustees, Second Lien Notes Trustees to payment of fees, expenses, and indemnification obligations as against any money or property distributable to the Holders under the relevant indenture or DIP Credit Agreement, including any rights to priority of payment and/or to exercise charging liens. Each of the ABL Agent, the Term Loan Administrative Agent, the First Lien Notes Trustee, the Second Lien Notes Trustee, the Unsecured Notes Trustee, and the Term Loan/First Lien Notes Collateral Agent shall be released and shall have no further obligation or liability except as provided in the Plan and Confirmation Order, and after the performance by the ABL Agent, the Term Loan Administrative Agent, the First Lien Notes Trustee, the Second Lien Notes Trustee, the Unsecured Notes Trustee, and the Term Loan/First Lien Notes Collateral Agent and their respective representatives and Professionals of any obligations and duties required under or related to the Plan or Confirmation Order, each of the ABL Agent, the Term Loan Administrative Agent, the First Lien Notes Trustee, the Second Lien Notes Trustee, the Unsecured Notes Trustee, and the Term Loan/First Lien Notes Collateral Agent shall be relieved of and released from any obligations and duties arising thereunder. Except as provided in the Plan, on the Effective Date, the DIP Agent and its respective agents, successors, and assigns shall be automatically and fully released of all of their duties and obligations associated with the DIP Credit Documents. The commitments and obligations, if any, of the DIP Lenders to extend any further or future credit or financial accommodations to any of the Debtors, any of their respective subsidiaries, or any of their respective successors or assigns under the DIP Credit Documents, as applicable, shall fully terminate and be of no further force or effect on the Effective Date.

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82. **Distributions.** The procedures governing distributions contained in Article VI of the Plan shall be, and hereby are, approved in their entirety.

83. **Preservation of Causes of Action.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Article VII and Article X of the Plan and the Asset Purchase Agreement, the Plan Administrator shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action and notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan, other than Avoidance Actions and the Causes of Action (a) that constitute OpCo Acquired Assets or PropCo Acquired Assets, (b) released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article X, or (c) waived in accordance with Article IVL which in the case of the foregoing (b) or (c) shall be deemed released and waived by the Debtors and the Wind-Down Debtors as of the Effective Date.

84. The Plan Administrator may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Wind-Down Debtors. The Plan Administrator shall retain and may exclusively enforce any and all such Causes of Action. The Plan Administrator shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Court.

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85. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Plan Administrator will not pursue any and all available Causes of Action against it, except as assigned or transferred to the Purchaser Group in accordance with the Asset Purchase Agreement or otherwise expressly provided in the Plan, including Article IV and Article X of the Plan. Unless any such Causes of Action against an Entity are expressly waived (including pursuant to Article IV.L of the Plan), relinquished, exculpated, released, compromised, assigned, or transferred to the Purchaser Group in accordance with the Asset Purchase Agreement, or settled in the Plan or a Final Order, the Plan Administrator expressly reserves all such Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, Claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

86. **Preservation of Setoff Rights**. Notwithstanding anything in Article X of the Plan to the contrary or in the Sale Order, any right of setoff or recoupment is preserved against the Debtors, OpCo Purchaser, PropCo Purchaser, and any of their affiliates and successors to the extent such right(s) exist under applicable law and subject to the Debtors' , OpCo Purchaser' s, PropCo Purchaser' s and any of their affiliates' and successors' , as applicable, right to contest any such right(s) of setoff or recoupment; provided that any rights of setoff or recoupment with respect to pre-Closing administrative claims shall only be asserted against the Debtors subject to the reservation of counterparties rights in paragraph 10 of the Sale Order; *provided*, *however*, that

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notwithstanding the foregoing or anything in the Plan to the contrary, the right of any Entity or Holder of a Claim or Interest to assert setoff or recoupment as a defense or affirmative defense to Claims brought against them is expressly preserved to the extent permitted by applicable law and shall not be impaired, enjoined, precluded, restricted, or otherwise limited by the Plan or this Confirmation Order.

87. **Subordination.** Pursuant to section 510 of the Bankruptcy Code, and subject to the RSA and the Asset Purchase Agreement, the Wind-Down Debtors reserve the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

88. **Release of Liens.** Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors' Estates that have not been previously released shall be fully released, settled, and compromised, and the holder of such mortgages, deeds of trust, Liens, pledges, or other security interest against any property of the Debtors' Estates shall be authorized to take such actions as may be reasonably requested by the Debtors to evidence such releases, at the sole expense of the Debtors or Wind-Down Debtors, as applicable.

89. **New Organizational Documents.** The terms of the New Organizational Documents are approved in all respects. The obligations of PropCo related thereto will, upon execution, constitute legal, valid, binding, and authorized obligations of PropCo, enforceable in accordance with their terms and not in contravention of any state or federal law. On the Effective

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Date, without any further action by the Court, PropCo, as applicable, will be and is authorized to enter into the New Organizational Documents and all related documents, to which PropCo is contemplated to be a party on the Effective Date. In addition, on the Effective Date, without any further action by the Court or the directors, officers or equity holders of PropCo, PropCo will be and is authorized to: (a) execute, deliver, file, and record any other contracts, assignments, certificates, instruments, agreements, guaranties, or other documents executed or delivered in connection with the New Organizational Documents; (b) perform all of its obligations under the New Organizational Documents; and (c) take all such other actions as any of the responsible officers of PropCo may determine are necessary, appropriate or desirable in connection with the consummation of the transactions contemplated by the New Organizational Documents. Notwithstanding anything to the contrary in this Confirmation Order or Article XIII of the Plan, after the Effective Date, any disputes arising under the New Organizational Documents will be governed by the jurisdictional provisions therein.

90. **Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

91. **Treatment of Executory Contracts and Unexpired Leases.** Pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code and subject to the Assignment Procedures (as defined in the Sale Order), upon the occurrence of the Effective Date, the Plan provides for the assumption or rejection of certain Executory Contracts and Unexpired Leases. The Debtors' determinations regarding the assumption or rejection of Executory Contracts and Unexpired Leases are based on and within the sound business judgment of the Debtors, are necessary to the implementation of the Plan and are in the best interests of the Debtors, their Estates, holders of Claims or Interests, and other parties in interest in these Chapter 11 Cases.

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92. **Assumption of Contracts and Leases.** Subject to the Sale Order (including the Assignment Procedures (as defined in the Sale Order)) and the OpCo Designation Rights Period and the PropCo Designation Rights Period, on the Effective Date, except as otherwise provided herein or in the Plan, each Executory Contract or Unexpired Lease not previously assumed, assumed and assigned, or rejected shall be deemed automatically rejected by the applicable Debtor, unless otherwise agreed by the applicable lessor, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than those that: (a) are identified on the Schedule of Assigned Contracts or the Potentially Assigned Contracts Lists (as defined in the Sale Order); (b) have been previously assumed or rejected by the Debtors pursuant to the Assignment Procedures or any other Court order; (c) are the subject of a Filed motion to assume, assume and assign, or reject such Executory Contract or Unexpired Lease (or of a Filed objection with respect to the proposed assumption and assignment of such contract) that is pending on the Effective Date; or (d) are a contract, release, or other agreement or document entered into in connection with the Plan.

93. This Confirmation Order shall constitute an order of the Court approving, subject to and upon the occurrence of the Effective Date, the assumptions, assumptions and assignments, or rejections of the Executory Contracts and Unexpired Leases as set forth in the Plan, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, except as otherwise provided in the Plan, this Confirmation Order or the Sale Order. Any Filed motions, Executory Contracts and Unexpired Leases noticed for assumption and assignment with a pending objection that has not yet been

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resolved, to assume, assume and assign, or reject any Executory Contracts or Unexpired Leases that are pending on the Effective Date shall be subject to approval by the Court on or after the Effective Date by a Final Order but may be withdrawn, settled, or otherwise prosecuted by the Plan Administrator, with any such disposition to be deemed to effect an assumption, assumption and assignment, or rejection, as applicable, as of the Effective Date.

94. Subject to the Sale Order and the Asset Purchase Agreement, each Executory Contract and Unexpired Lease assumed pursuant to the Plan or by any order of the Court, which has not been assigned to a third party on or prior to the Effective Date, shall revest in the Debtors and be fully enforceable by the Plan Administrator in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Court authorizing and providing for its assumption under applicable federal Law.

95. Subject to the Sale Order, to the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Notwithstanding anything to the contrary herein or in the Plan, the Debtors or the Plan Administrator, as applicable, reserve the right to alter, amend, modify, or supplement (a) the Schedule of Rejected Executory Contracts and Unexpired Leases (i) with respect to OpCo Available Contracts, with the consent of the OpCo Purchaser, at any time up to the earlier of (x) 90 days following the OpCo Closing Date, (y) February 28, 2021,

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and (z) solely with respect to unexpired Leases for nonresidential real property, the deadline set forth in section 365(d)(4) of the Bankruptcy Code, consistent with the Asset Purchase Agreement, (the "OpCo Designation Rights Period") and (ii) with respect to PropCo Available Contracts (as defined in the Asset Purchase Agreement), with the consent of the PropCo Purchaser, at any time up to the earlier of (x) the Effective Date, (y) PropCo Closing, and (z) solely with respect to unexpired Leases for nonresidential real property, the deadline set forth in section 365(d)(4) of the Bankruptcy Code (the "PropCo Designation Rights Period"), or (b) the Schedule of PropCo Assigned Contracts, with the consent of the PropCo Purchaser, at any time up to the expiration of the PropCo Designation Rights Period, consistent with the Asset Purchase Agreement.

96. Notwithstanding anything to the contrary herein or in the Plan and except to the extent permitted by the Bankruptcy Code, absent further order of the Court or agreement among the Debtors or the Purchasers, on the one hand, and the applicable non-Debtor counterparty, on the other hand, the sale of any real estate property owned by any of the Debtors (such property, the "Owned Encumbered Property") or assignment of any nonresidential real property lease shall not be, free and clear of (and shall not extinguish or otherwise diminish) any interests, covenants, or rights applicable to such real estate assets that limit or condition the permitted use of the property such as easements, reciprocal easement agreements, construction operating and reciprocal easement agreements, operating or redevelopment agreements, covenants, licenses, or permits (collectively, "Restrictive Covenants") unless such provisions, or any relevant portions thereof, are found to be solely executory in nature. Any amounts due and owing or that become due and owing in the ordinary course of business on account of any reciprocal easement agreements, construction operating and reciprocal easement agreements or operating or redevelopment agreements related to the OpCo Acquired Assets or the PropCo Acquired Assets shall be paid by

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the Debtors, OpCo Purchaser, or PropCo Purchaser, as applicable, in the ordinary course. To the extent that any Debtor or Wind-Down Debtor or any other party seeks to assume and assign any real estate leases to which a Debtor is a party, or transfer ownership or interest in the Owned Encumbered Property, free and clear of any Restrictive Covenant, such Debtor or such party shall file a notice that describes the Restrictive Covenant that the Debtor or other party is seeking to extinguish or otherwise diminish and any non-Debtor counterparty to a Restrictive Covenant will have fourteen (14) calendar days from the filing and service of notice of such requested relief (unless otherwise agreed to in writing by the Debtors' counsel) to file and serve an objection thereto; any such objection shall be determined by the Court or otherwise resolved consensually prior to the Effective Date or assignment of any related unexpired lease, and all rights, remedies, and positions of all parties with respect to any such relief are preserved. Nothing herein, the Plan, the Asset Purchase Agreement, or any other related agreements, documents, or other instruments shall be deemed to amend, modify, or otherwise affect the rights and obligations of (i) any party to an Unexpired Lease of nonresidential real property under such lease or (ii) any party with a real property interest, except, in each case, to permit the consummation of the transactions expressly provided for in the Sale Order (including the Transaction and the assignment of the Assigned Contracts, and sale of Owned Encumbered Property, to the OpCo Purchaser or PropCo Purchaser, as applicable).

97. Notwithstanding anything to the contrary in this Confirmation Order or the Plan (including the releases set forth herein or in the Plan), and subject to any arrangement between the respective parties to the Asset Purchase Agreement as to such liability, with respect to any assumed and assigned Unexpired Lease of nonresidential real property or any Restrictive Covenant, the Debtors, the Wind Down Debtors, the OpCo Purchaser, and the PropCo Purchaser, as applicable,

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shall be liable to the counterparty to such Unexpired Lease or Restrictive Covenant to the extent provided for in the Asset Purchase Agreement or other agreement with the applicable counterparty or as determined by order of the Court for the following: (1) amounts owed under any assumed and assigned Unexpired Lease of nonresidential real property or Restrictive Covenant that are unbilled or not yet due as of the effective date of the assignment, regardless of when such amounts accrued, such as common area maintenance, insurance, taxes, and similar charges; (2) any regular or periodic adjustment or reconciliation of charges under the assumed and assigned Unexpired Lease of nonresidential real property or Restrictive Covenant that are not due or have not been determined as of the date of the effective date of the assignment; (3) any percentage rent that may come due under the assumed and assigned Unexpired Lease of nonresidential real property; (4) indemnification obligations, if any, up to the date of the effective date of the assignment; and (5) any unpaid Cure Costs under the assumed and assigned Unexpired Lease of nonresidential real property, each calculated in accordance with the terms of any applicable amendment to such Unexpired Lease of nonresidential real property. Nothing in the Plan or this Confirmation Order shall impair the right of a counterparty to an Executory Contract or Unexpired Lease to assert a claim for rejection damages in accordance with section 365 of the Bankruptcy Code, or receive an allowed General Unsecured Claim on account of such rejection damages, and nothing in the Plan or this Confirmation Order shall impair the right of a counterparty to an Unexpired Lease of nonresidential real property to object to the assumption and assignment of such Unexpired Lease on grounds of inadequate assurance of future performance.

98. Notwithstanding anything to the contrary herein, all rights of a lessee and/or sublessee~~,~~ set forth in 11 U.S.C. § 365(h) are hereby preserved for all purposes. Nothing in this Confirmation Order or the Plan shall affect any state law rights of lessees or sublessees to continued possession of a leased premises in the event of the Debtors' rejection, in its capacity as landlord or sub-landlord, of an unexpired non-residential lease to the extent such rights exist under applicable law.

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99. **Indemnification.** As of the Effective Date, the New Organizational Documents of PropCo shall, to the fullest extent permitted by applicable law, provide for the indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses to, current and former managers, directors, officers, employees, or agents at least to the same extent as the certificate of incorporation, bylaws, or similar organizational document of each of the respective Debtors on the Petition Date, against any claims or causes of action whether derivative, liquidated or unliquidated, fixed, or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted.

100. The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified in all respects by the Wind-Down Debtors except for actual fraud, willful misconduct, or gross negligence, as determined by Final order entered by a court of competent jurisdiction. The Plan Administrator may obtain, at the expense of the Wind-Down Debtors and with funds from the Wind-Down Reserve, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Wind-Down Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

101. **Directors' and Officers' Liability Insurance.** Notwithstanding anything in this Confirmation Order to the contrary, the Wind-Down Debtors are hereby approved to assume all of the Debtors' D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date. Notwithstanding anything to the contrary contained in

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this Confirmation Order, any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies shall not be discharged, impaired, or otherwise modified, and each such indemnity obligation shall be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan, as to which no Proof of Claim need be filed.

102. After the Effective Date, none of the Wind-Down Debtors shall terminate or otherwise reduce the coverage under any D&O Liability Insurance Policies (including any "tail policy") in effect on or after the Petition Date, with respect to conduct occurring prior thereto, and all directors and officers of the Debtors who served in such capacity at any time prior to the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy, to the extent set forth therein, regardless of whether such directors and officers remain in such positions after the Effective Date.

103. **Authorization to Consummate.** The Debtors are authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to Consummation set forth in Article IX of the Plan.

104. **Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than 45 days after the Effective Date. The Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and the Court. The Wind-Down Debtors shall pay Professional Fee Claims in Cash in the amount the Court Allows, including from the Professional Fee Escrow Account, which the Debtors will establish prior to the Effective Date and maintain in trust for the Professionals and fund with Cash on the Effective Date. No funds in the Professional Fee Escrow Account shall be property of the Estates. Any funds remaining in the Professional Fee

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Escrow Account after all Allowed Professional Fee Claims have been paid shall be turned over to the Wind-Down Debtors. From and after the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Court.

105. **Post-Confirmation Fees and Expenses.** Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Professionals, subject to the Wind-Down Budget. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtors or the Plan Administrator, as applicable, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Court; *provided* that none of the Purchasers shall be liable or otherwise responsible for the payment of any Professional Fee Claims.

106. **Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in Article X of the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

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a. **Discharge of Claims and Termination of Interests.**

107. **Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created or entered into pursuant to the Plan (including the Exit Facility Documents), the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Wind-Down Debtors), Interests, and Causes of Action of any nature whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Interest based upon such debt, right, or interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (iii) the Holder of such a Claim or Interest has accepted the Plan. This Confirmation Order shall be a judicial determination of the discharge of all Claims (other than the Reinstated Claims) and Interests (other than the Intercompany Interests that are Reinstated) subject to the occurrence of the Effective Date.**

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b. **Release of Liens.**

108. **Except as otherwise specifically provided in the Plan, on the Effective Date, concurrently with the Consummation of the PropCo Sale and except as otherwise set forth in the Asset Purchase Agreement, the PropCo Acquired Assets shall be transferred to and vest in PropCo free and clear of all Liens, Claims, charges, interests, or other encumbrances pursuant to sections 363(f) and 1141(c) of the Bankruptcy Code and in accordance with the terms of this Confirmation Order, the Plan, and the Asset Purchase Agreement, each as applicable. Without limiting the foregoing, except as otherwise provided in the Asset Purchase Agreement, the Plan, the Plan Supplement, the Exit Facility Documents, or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of an Other Secured Claim, satisfaction in full of the portion of the Other Secured Claim that is Allowed as of the Effective Date and required to be satisfied pursuant to the Plan, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with Article III hereof, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert automatically to the applicable Debtor and its successors and assigns. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any Cash Collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as may be**

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reasonably requested by the Plan Administrator to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases, and the Debtors and their successors and assigns shall be authorized to file and record such terminations or releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

c. Releases by the Debtors.

109. **Notwithstanding anything contained in the Plan to the contrary, effective as of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, including the service of the Released Parties in facilitating the expeditious reorganization of the Debtors and implementation of the restructuring contemplated by the Plan, the adequacy of which is hereby confirmed, on and after the Effective Date each Released Party is deemed released and discharged by each and all of the Debtors, their Estates, and the Wind-Down Debtors, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims, asserted or assertable on behalf of any of the Debtors, their Estates, or the Wind-Down Debtors, as applicable, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in Law, equity, or otherwise, that the Debtors, their Estates, or the Wind-Down Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, or that any holder of any Claim against, or**

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Interest in, a Debtor or other Entity could have asserted on behalf of the Debtors based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Wind-Down Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' or the Wind-Down Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the ABL Documents, the Term Loan Credit Documents, the Restructuring Transactions, the Sale Transaction, entry into the Asset Purchase Agreement, the Exit Facilities, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or Consummation of the RSA, the Disclosure Statement, the DIP Facility, the Sale Transaction, the Asset Purchase Agreement, the Plan, the Plan Supplement, other Definitive Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the DIP Facility, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the pursuit of the Sale Transaction, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion), or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective

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Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any liabilities or obligations of the PropCo Purchaser to the Debtors relating to the Asset Purchase Agreement, (2) any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including the Asset Purchase Agreement and any documents set forth in the Plan Supplement, each as applicable) executed to implement the Plan, (3) any Causes of Action listed on the Schedule of Retained Causes of Action, or (4) any Claims by any of the Debtors arising out of any ordinary course dealings between such parties.

110. **Entry of this Confirmation Order shall constitute the Court' s approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Court' s finding that the Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the Restructuring and implementing the Plan; (b) a good faith settlement and compromise of such Claims; (c) in the best interests of the Debtors and their Estates; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Debtors, their respective Estates, or the Wind-Down Debtors asserting any Claim or Cause of Action released pursuant to the Debtor Release.**

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d. **Releases by the Releasing Parties.**

111. **Notwithstanding anything contained in the Plan to the contrary, effective as of the Effective Date, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions of the Released Parties in facilitating the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, to the fullest extent permissible under applicable law, as such Law may be extended or integrated after the Effective Date, on and after the Effective Date each of the Releasing Parties, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, or because of the foregoing entities, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged each Released Party from any and all Claims, interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in Law, equity, or otherwise, including any derivative Claims, asserted or assertable on behalf of any of the Debtors or their Estates, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Wind-Down Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' or the Wind-Down Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the ABL Documents, the First Lien Debt Documents, the Restructuring Transactions, the Sale Transaction, entry into the Asset**

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Purchase Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or Consummation of the RSA, the Disclosure Statement, the DIP Facility, the Sale Transaction, the Asset Purchase Agreement, the Plan, the Plan Supplement, other Definitive Documents, the Exit Facilities, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the DIP Facility, the Exit Facilities, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the pursuit of the Sale Transaction, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Releasing Party on the Plan or the Confirmation Order in lieu of such legal opinion), or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any liabilities or obligations of any Entity to the Purchaser Group relating to the Asset Purchase Agreement, (2) any post-Effective Date obligations of any party or Entity under the Plan (or preserved by the Plan), any Restructuring Transaction, or any document, instrument, or agreement (including the Asset Purchase Agreement and any documents set forth in the Plan Supplement, each as applicable) executed to implement the Plan, or (3) any Claims by any of the Debtors arising out of any ordinary course dealings between such parties.

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112. **Entry of this Confirmation Order shall constitute the Court' s approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Court' s finding that each Third-Party Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties, (2) a good-faith settlement and compromise of such Claims; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the Third-Party Release.**

e. **Exculpation.**

113. **Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any Cause of Action for any Claim related to any act or omission based on the formulation, preparation, dissemination, negotiation, entry into, filing, execution, and implementation of any transactions approved by the Court in the Chapter 11 Cases, including the RSA, the Asset Purchase Agreement, the Disclosure Statement, the Plan, the Plan Supplement, other Definitive Documents, the Confirmation Order, or any Restructuring Transaction, contract, instrument, release, or other agreement or document contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order, or created or entered into in connection with the RSA, the Asset Purchase Agreement, the Disclosure**

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Statement, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the pursuit of the Sale Transaction, the administration and implementation of the Plan, including the issuance of any securities pursuant to the Plan or the distribution of property under the Plan or any other related agreement, and the implementation of the Sale Transaction and the Restructuring Transactions contemplated by the Plan (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors or the Wind-Down Debtors, except for Claims related to any act or omission that is determined by Final Order to have constituted actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes on, and distribution of consideration pursuant to, the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding the foregoing, the exculpation shall not release (1) any obligation or liability of any Entity relating to the Asset Purchase Agreement, (2) for any post-Effective Date obligation under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or (3) any Claims by any of the Debtors arising out of any ordinary course dealings between such parties.

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f. **Injunction.**

114. **Effective as of the Effective Date, pursuant to section 524(a) of the Bankruptcy Code, to the fullest extent permissible under applicable law, and except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released pursuant to Article X.A of the Plan, released pursuant to the Debtor Release, the Third-Party Release, or another provision of the Plan (including the release of Liens pursuant to Article X.B of the Plan), or are subject to exculpation pursuant to Article X.E of the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Wind-Down Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind, against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before**

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the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan.

115. **Upon entry of this Confirmation Order, all Holders of Claims and Interests and their respective current and former employees, agents, officers, directors, principals, and direct and indirect Affiliates shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Each Holder of an Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in Article X.F of the Plan.**

116. **Compliance with Tax Requirements.** Each holder of an Allowed Claim or Interest that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution. In connection with the Plan, to the extent applicable, the Debtors or the Plan Administrator, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding

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taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors, the Wind-Down Debtors, and the Plan Administrator, as applicable, reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances. Except as otherwise provided in the Plan, the aggregate consideration paid to holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of such Allowed Claims, to the unpaid interest, if any, accrued through the Effective Date with respect to such Allowed Claims.

117. **Exemption from Transfer Taxes.** To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, (i) the sale of Acquired Assets and the transactions contemplated thereby, which are an integral part of the Plan, and (ii) any transfer (whether from a Debtor to a Wind-Down Debtor or to any other Person) of other property under, in furtherance of, in connection with, or otherwise contemplated by, the Plan or pursuant to (a) the issuance, distribution, transfer, or exchange of any debt, equity, Security, or other interest in the Debtors or the Wind-Down Debtors, (b) the Restructuring Transactions, (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means, (d) the making, assignment, or recording of any lease or sublease, or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan

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(including the transfer of assets to PropCo, the transfer of PropCo interests or the sale of individual assets by PropCo prior to or following the Effective Date), in each case, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, personal property transfer tax, sales or use tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of this Confirmation Order, the appropriate federal, state, or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

118. **Provision Regarding CARES Act**. Nothing in this Confirmation Order or the Plan discharges, releases, precludes, or enjoins any liability to a Governmental Unit on the part of any non-debtor. Nothing in this Confirmation Order or the Plan shall affect any valid right of setoff or recoupment of any Governmental Unit. Notwithstanding anything in the Plan to the contrary, the Disbursing Agent will pay the other Allowed Priority Tax Claims of the Internal Revenue Service in equal payments that occur at least annually and which include interest at the rate provided by 11 U.S.C. § 511, provided, however, that the Disbursing Agent is not required to make any payments on account of the Priority Tax Claims of the Internal Revenue Service until the later of (a) the Priority Tax Claim becoming Allowed, or (b) one hundred and eight days after the Effective Date. In addition, any entity assuming, or retaining, liability pursuant to the Plan and the Asset Purchase Agreement for unpaid payroll taxes deferred under the CARES Act will pay any such deferred payroll taxes when they come due under the CARES Act.

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119. **Provisions Regarding Adequate Protection.** Notwithstanding anything to the contrary herein, any of the other Definitive Documents, or the Financing Order (including, for the avoidance of doubt, Section S of the Financing Order), following the OpCo Closing Date (as defined in the Asset Purchase Agreement), (i) the terms and conditions of the Termination Agreement, dated on or about the OpCo Closing Date, entered into among certain of the Debtors and the ABL Agent (the "Payoff Letter") (a) shall remain in full force and effect, enforceable in accordance with the terms thereof and (b) shall not be modified, amended, or otherwise affected in any manner whatsoever by the terms of the Plan, the Confirmation Order, or otherwise without the prior written consent of the ABL Agent; and (ii) subject to the terms and conditions of the Payoff Letter, (a) no further amounts shall accrue and become due and owing on behalf of the Adequate Protection Liens, Adequate Protection Claims, or such payments described in paragraphs 45(a)-(b) of the Financing Order (each as defined in the Financing Order), (b) the Debtors shall no longer be required to comply with the reporting requirements set forth paragraph 45(d) of the Financing Order, and (c) following Payment in Full of all ABL Obligations (as defined in the Financing Order) in accordance with the Asset Purchase Agreement and the Sale Order, all requirements relating to the ABL Obligations (as defined in the Financing Order) (including, for the avoidance of doubt, ABL Adequate Protection, ABL Adequate Protection Liens, ABL Adequate Protection Payments and ABL Adequate Protection Claims (each as defined in the Financing Order), required consent for disposition of ABL Priority Collateral (as defined in the Financing Order), ABL Milestones (as defined in the Financing Order), and reporting, appraisal, and inspection rights) shall be terminated. For the avoidance of doubt, nothing contained in the Plan, the Confirmation Order, or any of the other Definitive Documents constitutes or shall be construed as any modification or amendment of the rights, benefits, or obligations of the ABL Secured Parties under the Sale Order.

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120. As of the OpCo Closing Date, the Debtors are directed to and shall pay (and to the extent the Debtors have already paid, are authorized to pay, and any such payments already paid are hereby ratified) in full in Cash all accrued and outstanding fees and expenses owing on the OpCo Closing Date pursuant to paragraphs 45 of the Financing Order or pursuant to the DIP Credit Agreement (as defined in the Financing Order) (including, for the avoidance of doubt, the Repayment Premium, as defined in the DIP Credit Agreement) in accordance with the terms thereof.

121. **Provisions Regarding First Lien Notes Trustee.** Nothing in the Plan or this Confirmation Order, nor the withdrawal of the First Lien Notes Trustee' s Limited Objection, shall be deemed to impair any rights the First Lien Notes Trustee may have under applicable law, if any, to seek a reconsideration, amendment, rehearing, or re-evaluation of the Sale Order, including all exhibits approved thereto, (any such proceeding to consider such a reconsideration, amendment, rehearing, or re-evaluation, a "Proceeding"); *provided*, *that* (a) such Proceeding, if any, shall not prevent the consummation of the OpCo Sale, the PropCo Sale, or the occurrence of the Effective Date and (b) all parties rights are reserved with respect to any such Proceeding.

122. **Provisions Regarding the SEC.** Notwithstanding any provision herein to the contrary, no provision of the Plan, or this Confirmation Order, (a) releases any non-Debtor Person or Entity (including any Released Party) from any Claim or Cause of Action of the United States Securities and Exchange Commission (the "SEC") or (b) enjoins, limits, impairs, or delays the SEC from commencing or continuing any Claims, Causes of Action, proceedings, or investigations against any non-Debtor Person or Entity (including any Released Party) in any forum.

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123. **Provisions Regarding Surety Bonds.** Certain surety companies (collectively, the "Sureties") (a) issue surety bonds on behalf of the Debtors to secure the Debtors' payments or performance of obligations related to certain PropCo Acquired Assets and other contractual obligations to be transferred to PropCo Purchaser (the "Existing Surety Bonds") and (b) entered into related indemnification and collateral agreements with the Debtors (the "Existing Indemnity Agreements"). For the avoidance of doubt, Existing Surety Bonds and Existing Indemnity Agreements do not include any surety bonds and related indemnification and collateral agreements that were assigned to OpCo pursuant to the Asset Purchase Agreement.

124. On the Effective Date, (a) all of the Debtors' obligations and commitments to any Sureties shall be deemed reaffirmed by the Plan Administrator or PropCo Purchaser, as applicable, (b) Existing Surety Bonds and related indemnification and collateral agreements entered into by any Debtor will be vested and performed by the applicable Wind-Down Debtor or PropCo Purchaser, as applicable, and will survive and remain unaffected by entry of this Confirmation Order or the Sale Order, and (c) the Plan Administrator shall be authorized to enter into new surety bond agreements and related indemnification and collateral agreements, or to modify any such existing agreements, to the extent reasonably necessary to implement the wind down of the Estates in accordance with the Plan.

125. **Provisions Regarding Cigna.** Notwithstanding anything in this Confirmation Order or the Plan to the contrary, if the Debtors or OpCo Purchaser elects to reject or otherwise terminate the Administrative Services Only Agreement – Account No. 3339076 (the "ASO Agreement") pursuant to the Plan then, not later than the earlier of (a) December 31, 2020 or (b) ten (10) business days prior to the termination of the Benefits TSA, the Debtors shall file and serve upon counsel of record for Cigna Health and Life Insurance Company (together with its

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affiliates, "Cigna"), written notice ("Cigna Notice") of the rejection/termination date of the ASO Agreement (the "Termination Date"). The Cigna Notice shall also include the Debtors' irrevocable decision as to whether: (i) the Debtors, or a successor thereto, will fund payment of employee healthcare claims incurred, but not submitted, processed and paid prior to the Termination Date (the "Run-Out Claims") for the twelve (12) month period following such Termination Date; or (ii) the Debtors will not fund the payment of Run-Out Claims, in which case the Cigna Notice shall include (x) irrevocable notice to Cigna of the Debtors' direction to not process Run-Out Claims, (y) confirmation that the Debtors will provide adequate notice of their election to not fund Run-Out Claims to former employees of the Debtors, and (z) the name and contact information of a representative of the Debtors, or a successor thereto, to whom Cigna can direct inquiries from former employees whose healthcare claims will not be paid.

126. Notwithstanding anything to the contrary in the Sale Order or any notice related thereto: (a) the Employee Benefits Agreements (as defined in the *Objection of Cigna to Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Costs* [Docket No. 1828] (the "Cigna Objection")) through which Cigna provides administrative, insurance, and insurance-related services for the Debtors' employee benefits plan, shall be assumed and assigned to OpCo Purchaser as of the termination of the Benefits TSA (the "Assignment Date"), and, in lieu of cure, all obligations due and unpaid under the Employee Benefits Agreements accruing before the Assignment Date shall pass through to OpCo and survive assumption and assignment in accordance with their respective terms, and nothing in this Confirmation Order or section 365 of the Bankruptcy Code shall affect such obligations; and (b) upon Closing, the OpCo Purchaser shall open a segregated bank account at JPMorgan Chase through which self-insured healthcare claims of OpCo' s eligible participants and their dependents

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shall be funded (the "Plan Account"), and any amounts standing on deposit in the segregated bank account at JPMorgan Chase Account No. XXXXXX9953 held in the name of Debtor J. C. Penney Corporation, Inc. as of the Assignment Date shall be transferred to the Plan Account. This fully resolves the Cigna Objection.

127. **Provisions Regarding Oracle.** Consistent with the paragraph 25 of the Sale Order, and notwithstanding anything to the contrary in this Confirmation Order, the Plan, the Asset Purchase Agreement, the Transition Services Agreement, the RemainCo TSA, or any transitional use agreement between and/or among the Debtors and any party (the "TSA Documents"), neither this Confirmation Order, the Plan, the Asset Purchase Agreement, nor the TSA Documents shall authorize (1) the transfer, assumption, or assignment to any third party, of any contract between the Debtors and Oracle Credit Corp. and/or Oracle America Inc., successor in interest to NetSuite, Inc., Siebel Systems, Sleepycat, Sun Microsystems, Inc., Hyperion Systems Solutions, PeopleSoft, Inc., Retek, GoldenGate Software, and Sunopsis (collectively, "Oracle"); or (2) use of any Oracle license agreement in any way that is inconsistent with the relevant license grant, including but not limited to, exceeding the number of authorized users, and permitting shared use or license splitting absent further order of the Court or Oracle' s express prior consent. Oracle hereby preserves its rights with respect to any cure amounts owed under any agreement between Oracle and the Debtors; *provided* that the use of the Oracle license agreement shall be permitted in accordance with that certain *Amendment Four to the Ordering Document* executed November 20, 2020 amongst Oracle America, Inc. and J. C. Penney Corporation, Inc.

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128. **Provisions Regarding Bank Hapoalim.** Notwithstanding any other provision of the Plan or this Order (together with any proof of claims, orders, documents, or agreements relating thereto and any amended versions of the foregoing), to the extent that (a) Bank Hapoalim is successful in the appeal filed by Debtors that is currently pending in Case No. 19-00732-MN in the United States District Court for the District of Delaware (the "Weinstein Appeal") or the Weinstein Appeal is dismissed, (b) the Weinstein Appeal is finally resolved as described in the supersedeas bond securing Bank Hapoalim' s claim (the "Hapoalim Bond") which was posted by Debtors in the face amount of $2,160,000, and (c) Bank Hapoalim' s claim is liquidated as described in (a) or (b) above, Bank Hapoalim may execute against the Hapoalim Bond, to the extent permitted pursuant to applicable law and the terms and conditions of the Hapoalim Bond. In the event Bank Hapoalim satisfies the foregoing conditions and is able to execute against the Hapoalim Bond, any amounts that remain unpaid after executing against the Hapoalim Bond shall be categorized as general unsecured claims.

129. **Provisions Regarding Personal Injury Creditors.** Nothing in the Plan or this Confirmation Order shall preclude or prejudice Seth Smithey, Marissa Smithey, Samuel Covert, Mary Sue Ramsey, Deborah Zoerb, and Rosann Pelka (the "Personal Injury Creditors") from seeking and/or obtaining a judgment from the Debtors or the Wind-Down Debtors, *provided* that any recovery from the Debtors or Wind-Down Debtors shall solely be in the form of an allowed General Unsecured Claim and only in an amount up to any SIR or deductible under any applicable insurance policies for distribution purposes only under the Plan. Any recovery in an amount exceeding any SIR or deductible under any applicable insurance policies shall be recovered solely from insurance coverage (if any) and only to the extent of available insurance coverage and any proceeds thereof, if any; *provided, further* that the Personal Injury Creditors shall not collect from the Debtors and the Wind-Down Debtors in any way whatsoever except for the payment of the SIR or deductible amount that may be established upon the liquidation of the claim and paid pursuant to the Plan as a General Unsecured Claim. Nothing contained either in the Plan or in this

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Confirmation Order shall be a finding that liquidates the claims of the Personal Injury Creditors or that limits the amount of recovery of damages that are determined after the liquidation of the claims of the Personal Injury Creditors and that may be recovered from any available insurance policy that provides coverage of the claim. Further, nothing in the Plan or this Confirmation Order shall be construed to limit, extinguish, or diminish the insurance coverage that may exist that provides coverage of the claims of the Personal Injury Claimants. Notwithstanding Article X of the Plan, the Personal Injury Creditors shall be allowed to proceed to liquidate their claims and collect on any applicable insurance proceeds in state or federal court, as applicable, whether by trial or settlement, beginning on the date of this Confirmation Order without further order of the Court. To the extent any Personal Injury Creditors have filed a motion to modify the automatic stay in order to litigate their personal injury claims to final judgment and thus liquidate their claims, all parties reserve their rights with respect to such motion.

130. **Provisions Regarding Pension Benefit Guaranty Corporation.** Whereas, (i) the Debtors have stated to the Pension Benefit Guaranty Corporation (the "PBGC") that it seeks to effectuate a standard termination of the JC Penney Corporation Inc. Pension Plan (the "Pension Plan") under 29 U.S.C. § 1341; (ii) PBGC has timely filed contingent claims against each of the debtors' bankruptcy estates on account of liabilities that would be owed by each of the Debtors if the Pension Plan instead terminates in a PBGC-initiated termination under 29 U.S.C. 1342; and (iii) under the Amended Joint Chapter 11 Plan of Reorganization of J.C. Penney Company, Inc. and its Debtor Affiliates, General Unsecured Claims include the PBGC Claim in the PBGC Claim Amount.

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131. It is hereby ordered, that unless and until the Debtors effectuate a standard termination of the Pension Plan, PBGC' s right to assert the PBGC claim in the claim amount against Debtors' bankruptcy estate are reserved. Should the Debtors fail to effectuate a standard termination of the Pension Plan, PBGC shall be entitled to assert the PBGC Claim in the full amount of the PBGC Claim Amount as if the Pension Plan terminated on or before the Effective Date, and such PBGC claim shall receive its pro rata share of the recovery being provided to Holders of Allowed General Unsecured Claims under the Plan.

132. **Provisions Regarding New York City District Council of Carpenters Pension Fund.** Nothing in the Plan, including Article VI(B) thereof, shall reduce or eliminate the distributions under Article III(B) of the Plan, if any, to which the New York City District Council of Carpenters Pension Fund would otherwise be entitled on account of their claims against the Debtors, jointly and severally. The New York City District Council of Carpenters Pension Fund acknowledges that all of its claims are solely Class 8 General Unsecured Claims.

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133. **Provisions Regarding Taxing Entities**. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, the Taxing Entities[4] whose certain tax claims pertain to property not sold or otherwise transferred to OpCo Purchaser or PropCo Purchaser pursuant to the Sale Order shall be treated as Other Secured Tax Claims. These ad valorem tax claims shall be paid prior to their delinquency as required by Texas state or other applicable law, or ten (10) days from the Plan' s Effective Date, whichever is earlier. The tax liens, if any, securing these tax claims, to the extent that the Taxing Entities are entitled to such liens, shall be retained against property of the estate (including all related sale proceeds) in accordance with applicable state law, until such time as said tax claims are paid in full. Statutory interest as allowed by applicable state law shall be paid on these certain tax claims until such time as these taxes are paid in full. In the event of default, the affected Taxing Entity shall be entitled to pursue collection of all amounts owed and as allowed pursuant to applicable law.

134. **Provisions Regarding Orange County Tax Collector**. Notwithstanding anything to the contrary in this Confirmation Order or the Sale Order, the Debtors, the PropCo Purchaser, or the OpCo Purchaser, as applicable, shall pay property taxes as they become due and owing in the ordinary course pursuant to applicable law; *provided* that nothing in this Confirmation Order shall relieve the Debtors of any liability to the OpCo Purchaser or the PropCo Purchaser under the Asset Purchase Agreement that may arise from the OpCo Purchaser' s or PropCo Purchaser' s payment of any property tax that is not an Assumed Liability.

135. Notwithstanding anything to the contrary in this Confirmation Order the Sale Order, the Orange County, Florida Tax Collector (the "OC Tax Collector") shall retain any valid, perfected and unavoidable statutory liens, if any, held by the OC Tax Collector for real property and tangible personal property taxes (the "Tax Liens"), to the extent that the OC Tax Collector is entitled to such liens in accordance with applicable state law. In addition, the OC Tax Collector shall be entitled to enforce its Tax Liens to collect any unpaid taxes in accordance with applicable

4 As used herein, the "Taxing Entities" shall mean, collectively, The County of Williamson, Texas, The County of Hays, Texas, Bell County Tax Appraisal District, Texas, The County of Comal, Texas, The City of Waco, et al., Texas, The County of Brazos, Texas, The County of Denton, Texas, Midland Central Appraisal District, Texas, The County of Anderson, Texas, and Taylor County Central Appraisal District, Texas, Arlington Independent School District, Brazoria County Municipal Utility District #6, Brazoria County Tax Office, Burleson Independent School District, Channelview Independent School District, City of Houston, City of Burleson, City of Greenville, City of Rosenberg, City of Weslaco, Clear Creek Independent School District, Conroe Municipal Utility District #1, Fort Bend County Municipal Utility District #167, Fort Bend Independent School District, Fort Bend Levee Improvement District #2, Frisco Independent School District, Galena Park Independent School District, Harris County Municipal Utility District #285, Humble Independent School District, Kerr County, Kerrville Independent School District, Lubbock Central Appraisal District, Maverick County, Midland County, Pasadena Independent School District, Plano Independent School District, Potter County, Randall County, Spring Branch Independent School District, Tyler Independent School District, Walker County Appraisal District, Weslaco Independent School District, Wichita County, Willis Independent School District, Woodlands Metro Municipal Utility District #1, Woodlands Road Utility District #1, Angelina County, Bexar County, Cameron County, Cypress-Fairbanks ISD, Dallas County, City of Del Rio, City of Eagle Pass, Eagle Pass ISD, Ector CAD, City of El Paso, Ellis County, Fort Bend County, City of Frisco, Galveston County, Grayson County, Gregg County, City of Harlingen, Harlingen CISD, Harris County, Hidalgo County, Hunt County, Jefferson County, Lamar CAD, Lewisville ISD, City of McAllen, McLennan County, Montgomery County, Northwest ISD, Nueces County, Parker CAD, San Marcos CISD, Tarrant County, Tom Green CAD, Val Verde County, Victoria County, Collin County, Collin County Community College, City of Plano, City of Paris, Paris Junior College, McKinney Independent School District, and the Maricopa County Treasurer.

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state law to the extent such taxes are not paid by the Debtors, the PropCo Purchaser, or the OpCo Purchaser under applicable state law. Nothing in this Confirmation Order shall be deemed as an admission as to the validity of any lien or claim asserted by the OC Tax Collector and all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the OC Tax Collector are fully preserved.

136. **Provisions Regarding Mississippi Department of Revenue.** Notwithstanding anything in the Plan or this Confirmation Order to the contrary: (a) the Mississippi Department of Revenue' s (the "MDOR") setoff rights under section 553 of the Bankruptcy Code and recoupment rights, if any, are preserved; (b) nothing in the Plan or this Confirmation Order shall excuse the Debtors, Wind-Down Debtors, OpCo, PropCo, PropCo Trustee, or the Plan Administrator, as applicable, from any obligation under applicable Mississippi state law to timely submit returns and remit payment of administrative taxes in the ordinary course of business, and the MDOR shall not be required to file a request for payment of an expense described in sections 503(b)(1)(B) or (C) of the Bankruptcy Code as a condition for its being an Allowed administrative expense; *provided* that nothing in this Confirmation Order shall relieve the Debtors of any liability to the OpCo Purchaser or the PropCo Purchaser under the Asset Purchase Agreement that may arise from the OpCo Purchaser' s or PropCo Purchaser' s payment of any administrative tax that is not an Assumed Liability; (c) to the extent the MDOR' s Priority Tax Claims, if any, are not paid in full in cash on the Effective Date, such Priority Tax Claims shall, at a minimum, be paid by regular, annual installment payments in cash over a period not to exceed five years after the date of the order for relief under section 301 of the Bankruptcy Code, all as required under section 1129(a)(9)(C) of the Bankruptcy Code, along with nonbankruptcy interest in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code and Mississippi state law, as applicable;

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(d) MDOR shall be deemed to have opted out of the Third-Party Release and shall be neither a Released Party nor a Releasing Party under the Plan; (e) the statutorily-mandated treatment of MDOR' s Allowed Priority Tax Claims or any liabilities to MDOR described in sections 503(b)(1)(B) and (C) of the Bankruptcy Code shall not be considered a settlement or compromise under Bankruptcy Rule 9019; (f) solely to the extent permitted by Bankruptcy Rule 7015, the MDOR may timely amend any Proof of Claim against any Debtor after the Effective Date with respect to (i) a pending audit, (ii) an audit that may be performed, with respect to any pre- or postpetition tax return, or (iii) a filed tax return.

137. **Provisions Regarding Texas Comptroller**. Notwithstanding any term in the Plan or this Confirmation Order to the contrary, the following provisions will govern the treatment of the Texas Comptroller of Public Accounts (the "Texas Comptroller"): (a) the Texas Comptroller' s setoff rights are preserved under § 553 of the Bankruptcy Code; (b) any and all pre- and postpetition tax liabilities owed by the Debtors to the Texas Comptroller, including those resulting from audits, shall be determined and resolved in accordance with the laws of the state of Texas or pursuant to § 505 of the Bankruptcy Code, as applicable, and paid in accordance with Article II of the Plan, § 1129(a)(9)(C) of the Bankruptcy Code, or applicable nonbankruptcy law, as applicable; (c) all matters involving the Debtors' pre- and postpetition tax liabilities to the Texas Comptroller shall be resolved in accordance with the processes and procedures provided by Texas law or pursuant to § 505 of the Bankruptcy Code, as applicable; (d) pursuant to 11 U.S.C § 503(b)(1)(D), the Texas Comptroller shall not be required to file any proof of claim or other request for payment of a postpetition tax to receive payment for any liability described in section 503(b)(1)(B) and (C) of the Bankruptcy Code; and (e) the Chapter 11 Cases shall have no effect on the Texas Comptroller' s rights as to non-debtor third parties. The Debtors' and Wind-Down Debtors' rights and defenses under Texas state law and the Bankruptcy Code with respect to the foregoing are fully preserved.

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138. The following provisions of this Confirmation Order will govern the treatment of the Texas Comptroller concerning the duties and responsibilities of the Debtors and the Wind-Down Debtors relating to all unclaimed property presumed abandoned (the "Texas Unclaimed Property") under Texas Property Code, Title 6, Chapters 72-76 and other applicable Texas laws (the "Texas Unclaimed Property Laws"):

a. On or within thirty (30) days after the Effective Date, or as soon as reasonably practicable thereafter, the Debtors and/or the Wind-Down Debtors shall reasonably review their books and records, as applicable, and turn over to the Texas Comptroller any known Texas Unclaimed Property presumed abandoned before the Petition Date and reflected in property reports delivered by the Debtors or Wind-Down Debtors to the Texas Comptroller under the Texas Unclaimed Property Laws (the "Reported Unclaimed Property"). With respect to such Reported Unclaimed Property, the Texas Comptroller will not seek payment of any interest or penalty by the Debtors or the Wind-Down Debtors;

b. Notwithstanding section 362 of the Bankruptcy Code and the injunction contained in Article X.F of the Plan, after the Effective Date, the Texas Comptroller and its agents may commence and/or continue an audit of the Debtors in accordance with the Texas Unclaimed Property Laws (the "Texas Unclaimed Property Audit") and pursue recovery of any unremitted Texas Unclaimed Property identified pursuant to the Texas Unclaimed Property Audit. The Debtors and the Wind-Down Debtors shall fully cooperate with the Auditors to enable them to accurately and timely perform the Texas Unclaimed Property Audit by making the entities' employees, professionals, books, and records available;

c. The Debtors' and Wind-Down Debtors' rights and defenses with respect to any allegations and claims asserted against the Debtors and/or Wind-Down Debtors arising from or relating to the Texas Unclaimed Property Audit are hereby reserved; *provided*, however, that upon agreement between the Debtors or the Wind-Down Debtors and the Texas Comptroller or a final nonappealable determination by a court or other tribunal with jurisdiction as to the amount of unremitted Texas Unclaimed Property, if any, that is due in connection with the Texas Unclaimed Property Audit, the Debtors or the Wind-Down Debtors shall turn over such unremitted Texas Unclaimed Property to the Texas Comptroller;

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d. The Texas Comptroller may file or amend any Proofs of Claim in these Chapter 11 Cases following the Effective Date as a result of the filing of any property reports or in the ordinary course of the Unclaimed Property Audit; and

e. Nothing herein precludes the Debtors and Wind-Down Debtors from compliance with continued obligations pursuant to Texas Unclaimed Property Laws.

139. **Provisions Regarding the Louisiana Department of Revenue.** Notwithstanding anything to the contrary herein or in the Plan, there shall be no requirement that the Secretary of the Louisiana Department of Revenue (the "LDR") file any request for payment of Administrative Claims. Notwithstanding the above, LDR may send a notice to the Debtors, with its asserted Administrative Claim. LDR shall be deemed to have opted out of the Third-Party Release in the Plan and this Confirmation Order and shall not be "Releasing Parties" or a "Released Party" pursuant to the Plan or the Confirmation Order.

140. The LDR' s Allowed Administrative Claims, if any, may accrue statutory interest and penalty to the extent permitted by applicable law. In no event shall a claim of the LDR be disallowed and/or expunged except in accordance with a properly filed and noticed objection to such claims with an opportunity to respond and be heard on such objection. Nothing in the Plan, this Confirmation Order, or the Plan Supplement limits the LDR' s rights under La. Rev. Stat. Ann. § 47:1561.1 or to exercise any right of set off or recoupment provided by applicable nonbankruptcy law to the extent permitted under, and in the manner required by, the Bankruptcy Code.

141. Notwithstanding anything to the contrary in the Plan and/or this Confirmation Order, all of LDR' s Allowed claims entitled to priority treatment pursuant to 11 U.S.C. § 507(a)(8) shall be paid with post-effective date interest at the rate required by 11 U.S.C. § 511. For the avoidance of doubt, such claims with interest as provided above will be paid either (a) in a lump

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sum on the date which is the latter of: (a)(i) the Effective Date or (ii) the first claim distribution date following the date on which such a claim becomes an Allowed Claim; or (b) in regular installment payments, not less than annually on the anniversary of the Effective Date or, at the election of the Debtors, the Wind-Down Debtors, OpCo Purchaser, PropCo Purchaser, or the Plan Administrator, as applicable, more frequently commencing after the Effective Date in an amount sufficient to ensure that all such claims are paid in full not later than five years after the Petition Date; *provided* that, for the avoidance of doubt, the foregoing shall not relieve the Debtors of any liability to the OpCo Purchaser or the PropCo Purchaser under the Asset Purchase Agreement that may arise from the OpCo Purchaser' s or PropCo Purchaser' s payment of any tax that is not an Assumed Liability.

142. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, the provisions of Article VI.D.3 (Provisions Governing Distributions) of the Plan under $100.00 shall not apply to the LDR; all Allowed Claims of the LDR shall be paid in full accordance with the classification to which it is entitled under the Bankruptcy Code. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, the provisions of Article VIII.B. (Undeliverable Distribution Reserve) of the Plan allowing the estate to reclaim checks after one year without any provision for notice to the claimant shall not apply to the LDR and the LDR' s right to any and all distributions shall be preserved until such payments are actually received by the LDR.

143. In the event the Debtor, Wind-Down Debtor, or Plan Administrator, as applicable, fails to make any installment payments required by the Plan, this shall be an event of default as to the LDR. The LDR shall send a notice to the Debtors, Wind-Down Debtors, or the Plan Administrator, as applicable, that if the event of default is not cured within twenty (20) days of such notice, the LDR shall proceed to collect all amounts owed pursuant to state law without further order of the Court.

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144. Nothing herein shall relieve the Debtors, the Wind-Down Debtors and/or the Plan Administrator, as applicable, from (a) filing all required Louisiana tax returns entitled to administrative or priority claim treatment under the Bankruptcy Code by the extension due dates or as may become due in the future or (b) from complying with Louisiana' s laws with respect to withdrawal and dissolution as would be required absent the filing of this case to the extent required by applicable law and the Bankruptcy Code.

145. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, the provisions of Article VI.L. (Claims Payable by Third Parties) of the Plan requiring a Holder of a Claim to repay or return excess distribution shall not apply to LDOR and LDOR shall process such overpayment in accordance with their refund and overpayment procedures; *provided* that the Debtors' and/or Wind-Down Debtors' , as applicable, rights with respect to such overpayment are fully preserved.

146. **Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring Transactions, and this Confirmation Order.

147. **Continued Effect of Stays and Injunction.** Unless otherwise provided in the Plan or this Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or any order of the Court that is in existence upon entry of this Confirmation Order shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or this Confirmation Order shall remain in full force and effect in accordance with their terms.

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148. **Nonseverability of Plan Provisions Upon Confirmation.** Each provision of the Plan is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' or Wind-Down Debtors' consent, as applicable; *provided* that any such deletion or modification must be consistent with the RSA; and (c) nonseverable and mutually dependent.

149. **Post-Confirmation Modifications.** Without need for further order or authorization of the Court, the Debtors or the Wind-Down Debtors, as applicable, are authorized and empowered to make any and all modifications to any and all documents that are necessary to effectuate the Plan that do not materially modify the terms of such documents and are consistent with the Plan (subject to any applicable consents or consultation rights set forth therein) and the RSA, the Asset Purchase Agreement, and the Sale Order. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors and the Wind-Down Debtors expressly reserve their respective rights to revoke or withdraw, or to alter, amend, or modify materially the Plan with respect to such Debtor, one or more times after Confirmation, and, to the extent necessary, may initiate proceedings in the Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.A of the Plan.

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150. **Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

151. **Waiver of Filings.** Any requirement under section 521 of the Bankruptcy Code or Bankruptcy Rule 1007 obligating the Debtors to File any list, schedule, or statement with the Court or the Office of the U.S. Trustee is permanently waived as to any such list, schedule, or statement not Filed as of the Confirmation Date.

152. **Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state, federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

153. **Exemption from Registration Requirements.** Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of the New PropCo Securities, shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of securities. In addition, under section 1145 of the Bankruptcy Code, such PropCo Securities will be freely tradable in the United States by the recipients thereof, subject to the provisions of (a) section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, (b) compliance with applicable securities laws and any rules and regulations of the SEC, if any, applicable at the time of any future transfer of such securities or instruments, and (c) any restrictions in the New Organizational Documents or Registration Rights Agreement.

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154. **Statutory Fees and Reporting.** All monthly and quarterly reports shall be filed in a form reasonably acceptable to the U.S. Trustee, and all fees payable pursuant to section 1930(a) of the Judicial Code, as determined by the Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid, by each of the Wind-Down Debtors (or the Disbursing Agent on behalf of each of the Wind-Down Debtors) for each quarter (including any fraction thereof) until the earlier of entry of a final decree closing such Debtor' s Chapter 11 Case or an order of dismissal or conversion, whichever comes first.

155. **Notices of Confirmation and Effective Date.** The Wind-Down Debtors shall serve notice of entry of this Confirmation Order and the occurrence of the Effective Date, substantially in the form attached hereto as **Exhibit B** (the "Confirmation Order and Effective Date Notice"), in accordance with Bankruptcy Rules 2002 and 3020(c) on all holders of Claims and Interests and the Core Notice Parties within ten (10) Business Days after the Effective Date. Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address," "forwarding order expired," or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity' s new address. The Confirmation Hearing Notice and the Confirmation Order and Effective Date Notice are adequate under the particular circumstances of these Chapter 11 Cases and no other or further notice is necessary.

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156. **Failure of Consummation.** If Consummation does not occur for a Debtor, the Plan shall be null and void in all respects to such Debtor and nothing contained in the Plan, the Disclosure Statement, or RSA as to such Debtor shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity; (b) prejudice in any manner the rights of the Debtors, any Holders of Claims or Interests, or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking by the Debtors, any holders of Claims or Interests, or any other Entity.

157. **Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under section 1101(2) of the Bankruptcy Code.

158. **References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

159. **Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

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160. **Effect of Conflict.** This Confirmation Order supersedes any Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. Notwithstanding the foregoing, nothing contained in the Plan or this Confirmation Order constitutes or shall be construed as any modification or amendment of the Sale Order or the Assignment Procedures attached thereto.

161. **Termination of Challenge Period**. The Challenge Period (as defined in the Financing Order) is terminated as of the date set forth in the Financing Order, and the stipulations, admissions, findings, and release contained in the Financing Order shall be binding on the Debtors' estates and all parties in interest as of the date set forth in the Financing Order.

162. **Final Order.** This Confirmation Order is a Final Order and the period in which an appeal must be Filed shall commence upon the entry hereof.

163. **Retention of Jurisdiction.** The Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising out of, and related to, these Chapter 11 Cases, including the matters set forth in Article XIII of the Plan and section 1142 of the Bankruptcy Code.

164. **Provision Regarding GFM 23, LLC.** Notwithstanding anything to the contrary herein, in the Plan, the Sale Order (including, without limitation, the specific procedures governing the assumption and assignment of unexpired leases set forth in Paragraph 10 thereof) or any other order entered in these Chapter 11 Cases or which may hereinafter be entered in this case, all rights, remedies and interests of the parties (or their successors and/or assigns) with respect to the pending litigation in the Court of Common Pleas of Mercer County, Pennsylvania, Docket Number 2019-3655 (the "State Court Litigation"), shall not in any way be released, settled, compromised, waived, altered or in any way modified. All parties, together with their respective successors and assigns, to the State Court Litigation expressly preserve all of their rights, claims and defenses in the State Court Litigation as if there had been no Bankruptcy filing; *provided* that any money damages that might be awarded in the State Court Litigation, if any, shall be treated as general unsecured claims and classified as a Class 8 - General Unsecured Claim in the Chapter 11 Cases.

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165. **Assumption and Assignment of the AIG[5] Insurance Program Agreements.** Notwithstanding anything to the contrary in the Plan, the Plan Supplement, the Disclosure Statement, this Confirmation Order, any other document related to any of the foregoing, or any other order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening, grants an injunction or release, requires a party to opt out of any releases or confers Bankruptcy Court jurisdiction), and consistent with the Asset Purchase Agreements and Sale Order, the Debtors hereby assume the AIG Insurance Program Agreements[6] in their entirety, pursuant to sections 105 and 365(a) of the Bankruptcy Code.

166. The Debtors and OpCo Purchaser have agreed that the Debtors shall assign and OpCo Purchaser and/or its direct or indirect subsidiaries (as separately agreed between AIG and OpCo Purchaser) shall consent to the assignment of certain insurance obligations in connection with the AIG Insurance Program Agreements as described herein and consistent with the Assignment Procedures. Specifically, as of the Opco Closing Date, the Debtors shall assign and the OpCo Purchaser and/or its direct or indirect subsidiaries (as separately agreed between AIG and OpCo Purchaser) shall accept the following, which shall be deemed to be Acquired Assets and

5 "AIG" means National Union Fire Insurance Company of Pittsburgh, Pa., and/or each of its affiliates and successors that provided insurance to the Debtors.

6 "AIG Insurance Program Agreements" means certain policies of insurance for general liability, automobile liability, workers compensation, and employer' s liability coverage commencing February 1, 2001 through and including the policy period ending February 1, 2021, together with all addenda, schedules, and endorsements thereto (including, without limitation, the requested endorsements adding OpCo Purchaser and/or its direct or indirect subsidiaries as named insureds under the current workers compensation and general liability policies), and that certain Payment Agreement for Insurance and Risk Management Services, effective February 1, 2001, together with all addenda, amendments, and schedules, and any similar agreements related thereto issued by AIG to the Debtors and/or their affiliates, subsidiaries or related entities, and other related agreements, collectively.

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Assumed Liabilities under the terms of the Asset Purchase Agreement and Sale Order: (i) all of the existing, outstanding and future debts, liabilities, obligations, rights and duties relating to workers compensation coverage from February 1, 2001 through February 1, 2021 under the AIG Insurance Program Agreements and (ii) all of the existing, outstanding and future debts, liabilities, obligations, rights and duties relating to commercial automobile and general liability coverage from the Petition Date through February 1, 2021 , as well as all premium, taxes, surcharges and fees for the full February 1, 2020 to February 1, 2021 automobile and general liability policy period (the "AIG Acquired Assets and Liabilities"). Notwithstanding anything to the contrary in the Sale Order or this Confirmation Order, the AIG Acquired Assets and Liabilities will be governed by the AIG Insurance Program Agreements, and OpCo Purchaser and/or its direct or indirect subsidiaries shall be bound by the terms thereof.

167. Other than the AIG Acquired Assets and Liabilities, the Debtors shall retain all of the other existing, outstanding and future debts, liabilities, obligations, rights and duties as such have been incurred and may be incurred under the AIG Insurance Program Agreements, including, without limitation, all other expenses, claims service fees, premium, surcharges, taxes, and assessments (collectively, the "Debtors' Retained Obligations").

168. The Debtors, OpCo Purchaser and/or its direct or indirect subsidiaries and any respective successor(s) thereof, as applicable, shall be liable for their respective obligations under the AIG Insurance Program Agreements and will be governed by the terms of such AIG Insurance Program Agreements, regardless of whether any such obligations arose before or after the Effective Date, without the requirement or need for AIG to file a Proof of Claim, an Administrative Claim, a Cure Claim, or to object to any cure amount. Nothing arising from these Chapter 11 Cases shall (a) alter, modify or otherwise amend the terms and conditions of (or the coverage

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provided by) any of the AIG Insurance Program Agreements or (b) alter, modify, amend, affect, impair, or prejudice the legal, equitable, or contractual rights, obligations, and defenses of AIG, the Debtors, OpCo Purchaser, or any other individual or entity, as applicable, under the AIG Insurance Program Agreements or any collateral or security relating thereto.

169. The automatic stay of section 362(a) of the Bankruptcy Code and the injunctions set forth in Article X.F of the Plan, if and to the extent applicable, and any other provision of this Order that provides for release or discharge of obligations, shall be deemed not applicable with respect to AIG after the Effective Date, solely to permit: (1) claimants with valid workers' compensation claims or direct action claims against the AIG under applicable non-bankruptcy law to proceed with their claims; (2) AIG to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of this Bankruptcy Court, (A) covered workers' compensation claims arising under the workers' compensation policies issued by AIG, (B) claims where a claimant asserts a direct claim against AIG under applicable non-bankruptcy law, or an order has been entered by this Bankruptcy Court granting a claimant relief from the automatic stay to proceed with its claim, (C) all costs in relation to each of the foregoing that are covered under the workers' compensation policies issued by the AIG; (3) AIG to draw against any or all of the collateral or security provided by or on behalf of the Debtors at any time and to hold the proceeds thereof as security for the obligations of the Debtors respectively and/or apply such proceeds to the obligations of the Debtors under the applicable AIG Insurance Program Agreements, in such order as the AIG may determine to the extent permissible under applicable non-bankruptcy law, and in accordance with the terms of the AIG Insurance Program Agreements; (4) AIG to cancel any of the Insurance Policies and take other actions relating thereto, to the extent permissible under applicable non-bankruptcy law, and in accordance with the terms of the AIG

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Insurance Program Agreements, and (5) notwithstanding whether any non-workers compensation claimant has relief from stay, AIG may defend, settle, resolve and/or pay claims of such claimants in the ordinary course of business without further order of this court, provided, however, that this provision shall not be deemed to grant such claimant relief from stay, without further order of this Court. For the avoidance of doubt, after the Effective Date all such rights and obligations under the AIG Insurance Program Agreements shall be determined under the AIG Insurance Program Agreements and applicable non-bankruptcy law as if the Chapter 11 Cases had not occurred. Notwithstanding the anything to the contrary herein, the automatic stay of section 362(a) of the Bankruptcy Code and the injunctions set forth in Article X.F of the Plan shall remain applicable to all general liability claims arising prior to the Petition Date up to the amount of $500,000, which are self-insured and shall be treated as general unsecured claims.

170. The Debtors are authorized to execute any documents, agreements, amendments, or issue any letters of credit, replacement collateral, or any other financial accommodations necessary, and to take any such further actions to effectuate the assignment of the AIG Acquired Assets and Liabilities and the terms of this Confirmation Order in connection with the AIG Insurance Program Agreements, including but not limited to, executing an assumption and assignment agreement in form and substance satisfactory to AIG, OpCo Purchaser, and the Debtors, executing any agreements, including a claims service agreement, with respect to the Debtors' Retained Obligations, and providing any replacement collateral with respect to the Debtors' Retained Obligations (the "Debtor Collateral"). The Debtors shall refrain from requesting a review or adjustment of the Debtor Collateral earlier than November 30, 2021 and shall not take any legal action on or before January 31, 2022 seeking to review or adjust the Debtor Collateral. AIG may keep and retain all existing collateral including the letters of credit from the Debtors unless and until all provisions of the assumption set forth herein are carried out to the satisfaction of AIG, the Debtors, and OpCo Purchaser or until further order of this Court.

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Houston, Texas
Signed: December 16, 2020.

/s/ David. R. Jones
DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

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Exhibit A

Plan

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	)	Chapter 11
J. C. PENNEY COMPANY, INC., *et al.*,[1]	)	Case No. 20-20182 (DRJ)
Debtors.	)	(Jointly Administered)

AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF J. C. PENNEY COMPANY, INC. AND ITS DEBTOR AFFILIATES

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1 A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' Claims and Noticing Agent at http://cases.primeclerk.com/JCPenney. The location of Debtor J. C. Penney Company, Inc.' s principal place of business and the Debtors' service address in these Chapter 11 Cases is 6501 Legacy Drive, Plano, Texas 75024.

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INTRODUCTION

J. C. Penney Company, Inc. ("J. C. Penney") and its affiliated debtors and debtors in possession in the above-captioned Chapter 11 Cases (each a "Debtor" and, collectively, the "Debtors") propose this joint plan of reorganization (the "Plan") for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings set forth in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, properties and operations, projections, risk factors, a summary and analysis of the Plan, and certain related matters.

ALL HOLDERS OF CLAIMS OR INTERESTS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

ARTICLE I
DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms.

As used in this Plan, capitalized terms have the meanings set forth below.

1. "*ABL Agent*" means Wells Fargo Bank, acting through such Affiliates or branches as it may designate, as collateral agent and administrative agent to the ABL Credit Agreement, or any administrative agent as permitted by the terms set forth in the ABL Credit Agreement.

2. "*ABL Claim*" means any Claim, including Secured Swap Claims, derived from, based upon, or arising under the ABL Credit Agreement.

3. "*ABL Credit Agreement*" means that certain Credit Agreement, dated as of June 20, 2014 by and among, inter alios, J. C. Penney Corporation, Inc., as a borrower, certain of the Debtors, as other borrowers and guarantors, the ABL Agent, and each of the lenders party thereto from time to time, as amended under (i) that certain Amendment No. 1 to Credit Agreement, dated as of December 10, 2015, (ii) that certain Amendment No. 2 to Credit Agreement, dated as of June 20, 2017, and (iii) that certain Amendment No. 3 to Credit Agreement, dated as of March 18, 2018, and as further amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time.

4. "*ABL Documents*" means, collectively, the ABL Credit Agreement and any related letter of credit documentation, security agreement, intercreditor agreement, and any other collateral and ancillary documents, including any forbearance agreements, as amended, restated, modified, or supplemented from time to time in accordance with their terms.

5. "*ABL Intercreditor Agreement*" means that certain Intercreditor and Collateral Cooperation Agreement, dated as of June 23, 2016 by and among, inter alias, J. C. Penney Corporation, Inc., the ABL Agent, the Term Loan Administrative Agent, and each of the Representatives party thereto from time to time, as amended, restated, amended and restated, extended, supplemented, or otherwise modified from time to time.

6. "*ABL Lenders*" means the lenders from time to time party to the ABL Credit Agreement.

7. "*Acquired Assets*" means, collectively, all OpCo Acquired Assets and PropCo Acquired Assets.

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8. *"Administrative / Priority Claims Reserve*" means a segregated account established by the Plan Administrator established in accordance with Article VIII.D.

9. "*Administrative / Priority Claims Reserve Amount*" means the amount of Cash necessary to satisfy all Allowed Administrative Claims, Allowed Priority Claims, Allowed Secured Tax Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims to the extent such Allowed Administrative Claims and Allowed Priority Claims are not Assumed Liabilities, which aggregate amount shall be funded into the Administrative / Priority Claims Reserve.

10. "*Administrative Claim*" means a Claim for costs and expenses of administration of the Estates under sections 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Estates and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims in the Chapter 11 Cases; and (c) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930; *provided*, *however*, that any Administrative Claim that is an Assumed Liability shall be satisfied pursuant to the Asset Purchase Agreement.

11. "*Administrative Claim Bar Date*" means the deadline for filing requests for payment of Administrative Claims, which shall be the later of (a) 30 days after the Effective Date or (b) in the event an Executory Contract is rejected following the Effective Date, solely as to Administrative Claims related to such rejected Executory Contract, 30 days after notice to the counterparty to such rejected Executory Contract.

12. "*Administrative Claim Objection Bar Date*" means the deadline for filing objections to requests for payment of Administrative Claims (other than requests for payment of Professional Fee Claims), which shall be the first Business Day that is 180 days following the Effective Date; *provided* that the Administrative Claims Objection Bar Date may be extended by the Bankruptcy Court after notice and a hearing.

13. "*Affiliate*" means, with respect to any person, or any other person, which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean, with respect to any Person, (x) the possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership, limited liability company or other ownership interests, by contract or otherwise) of such Person or (y) solely with respect to Affiliates of Consenting First Lien Lender, the investment or voting discretion or control with respect to discretionary accounts of such Person.

14. "*Aggregate Credit Bid*" means, collectively, (i) the DIP Credit Bid, and (ii) the Prepetition First Lien Credit Bid.

15. "*AHEC*" shall have the meaning set forth in the *Ad Hoc Equity Committee's Objection to Confirmation of Amended Joint Chapter 11 Plan of Reorganization of J.C. Penney Company, Inc. and its Debtor Affiliates* [Docket No. 1980]

16. "*Allowed*" means with respect to any Claim, except as otherwise provided in the Plan: (a) a Claim that is evidenced by a Proof of Claim Filed by the Claims Bar Date (or for which Claim under the Plan, the Bankruptcy Code, or pursuant to a Final Order a Proof of Claim is not or shall not be required to be Filed); (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not Disputed, and for which no Proof of Claim, as applicable, has been timely Filed; or (c) a Claim Allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; *provided* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim, as applicable, shall have been Allowed by a Final Order. Except as otherwise specified in the Plan or any Final Order, and except for any Claim that is Secured by property of a value in excess of the principal amount of such Claims, the amount of an Allowed Claim shall not include interest on such Claim from and after the Petition Date. For purposes of determining the amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of any Claim that the Debtors may hold against the Holder thereof, to the extent such Claim may be offset, recouped, or otherwise reduced under applicable law. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or Disputed, and for

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which no Proof of Claim is or has been timely Filed (where such Proof of Claim is required to be Filed), is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. For the avoidance of doubt: (x) a Proof of Claim Filed after the Claims Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim or agreement in writing by the Debtors and the holder of such late-Filed Claim; and (y) the Debtors may affirmatively determine to deem Unimpaired Claims Allowed to the same extent such Claims would be allowed under applicable non-bankruptcy law. "Allow" and "Allowing" shall have correlative meanings.

17. "*Asset Purchase Agreement*" means that certain Asset Purchase Agreement, dated as of October 28, 2020, executed by Copper Retail JV LLC and Copper BidCo LLC, and the Debtors in connection with the OpCo Sale and the PropCo Sale, a copy of which has been Filed with the Bankruptcy Court at [Docket No. 1668-1], together with all exhibits, appendices, supplements, documents, and agreements ancillary thereto, in each case as amended, modified, or supplemented from time to time.

18. "*Assigned Contracts*" means collectively, all OpCo Assigned Contracts and PropCo Assigned Contracts.

19. "*Assumed Liabilities*" means collectively, all OpCo Assumed Liabilities and PropCo Assumed Liabilities.

20. "*Avoidance Actions*" means any and all avoidance, recovery, subordination, or other Claims, actions, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 502, 510, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common Law, including fraudulent transfer Laws.

21. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101‑1532, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

22. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Southern District of Texas or such other court having jurisdiction over the Chapter 11 Cases, including, to the extent of the withdrawal of the reference under 28 U.S.C. § 156, the United States District Court for the Southern District of Texas.

23. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases and the general, local, and chambers rules of the Bankruptcy Court, as now in effect or hereafter amended.

24. "*Business Day*" means any day, other than a Saturday, Sunday, or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

25. "*Cash*" means the legal tender of the United States of America or the equivalent thereof, including bank deposits, checks, and cash equivalents, as applicable.

26. "*Cash Collateral*" has the meaning set forth in section 363(a) of the Bankruptcy Code.

27. "*Cause of Action*" or "*Causes of Action*" means any Claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, Secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, Law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and Claims under contracts or for breaches of duties imposed by Law; (b) the right to object to or otherwise contest Claims or Interests; (c) Claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; (d) such Claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state or foreign Law fraudulent transfer or similar Claim.

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28. "*Chapter 11 Cases*" means the procedurally consolidated cases Filed for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.

29. "*Claim*" means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

30. "*Claims and Noticing Agent*" means Prime Clerk LLC, the notice, Claims, and solicitation agent retained by the Debtors in the Chapter 11 Cases in accordance with the *Order Authorizing the Employment and Retention of Prime Clerk LLC as Claims, Noticing, and Solicitation Agent* [Docket No. 67].

31. "*Claims Bar Date*" means the date established pursuant to the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, including Section 503(b)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Docket No. 99] entered by the Bankruptcy Court on May 16, 2020, by which Proofs of Claim must be Filed with respect to Claims other than Administrative Claims, Claims held by Governmental Units, Claims based upon rejection damages, or other Claims or Interests for which the Bankruptcy Court entered an order excluding the holders of such Claims or Interests from the requirement of Filing Proofs of Claim.

32. "*Claims Objection Deadline*" means the date that is 180 days following the Effective Date.

33. "*Claims Register*" means the official register of Claims maintained by the Claims and Noticing Agent.

34. "*Class*" means a category of Claims or Interests under section 1122(a) of the Bankruptcy Code.

35. "*CM/ECF*" means the Bankruptcy Court' s Case Management and Electronic Case Filing system.

36. "*Confirmation*" means the Bankruptcy Court' s entry of the Confirmation Order on the docket of the Chapter 11 Cases, subject to all conditions specified in Article XI.A of the Plan having been (a) satisfied or (b) waived pursuant to Article XI.B of the Plan.

37. "*Confirmation Date*" means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

38. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court on Confirmation of the Plan, pursuant to sections 1128 and 1129 of the Bankruptcy Code and approval of the Disclosure Statement, as such hearing may be continued from time to time.

39. "*Confirmation Order*" means one or more orders of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

40. "*Consenting First Lien Lenders*" means the First Lien Lenders party to the RSA.

41. "*Consummation*" means the occurrence of the Effective Date.

42. "*Credit Bid*" shall mean, as applicable, a bid by the DIP Collateral Agent and the Term Loan/First Lien Notes Collateral Agent, in a manner consistent with the Financing Order, the Sale Order, and section 363(k) of the Bankruptcy Code.

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43. "*Credit Bid Distributions*" shall mean all the assets whose purchase was authorized by the Sale Order other than the OpCo Acquired Assets, including the New PropCo Securities and all of the Debtors' Cash except as necessary to fund the Administrative / Priority Claims Reserve, the Wind-Down Reserve, and the Professional Fee Escrow Account; *provided*, *however*, that any Credit Bid Distribution to be made to Holders of Allowed Claims (or the agent responsible for making such distribution) pursuant to the Sale Order and the Asset Purchase Agreement shall be made pursuant to the Sale Order and the Asset Purchase Agreement and not pursuant to this Plan.

44. "*Credit Bid Pro Rata*" shall mean, in accordance with the Asset Purchase Agreement and Sale Order and subject to the Minority First Lien Group Settlement, (a) with respect to DIP Claims, the proportion (x) each Holder' s Allowed DIP Claims bears to all Allowed DIP Claims and (y) the DIP Credit Bid bears to the Aggregate Credit Bid and (b) with respect to First Lien Claims, the proportion (x) each Holder' s Allowed First Lien Claims bears to all Allowed First Lien Claims and (y) the Prepetition First Lien Credit Bid bears to the Aggregate Credit Bid.

45. "*Creditors' Committee*" means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to the *Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 329].

46. "*Cure Cost*" means all amounts, including an amount of $0.00, required to cure any monetary defaults and other non-monetary defaults to the extent required by section 365 of the Bankruptcy Code, under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) that is to be assumed by the Debtors (and/or assigned by the Debtors pursuant to the Sale Order or the Confirmation Order) pursuant to sections 365 or 1123 of the Bankruptcy Code.

47. "*D&O Liability Insurance Policies*" means all insurance policies (including any "tail policy") and all agreements, documents or instruments relating thereto issued or providing coverage at any time to any of the Debtors or any of their predecessors for current or former directors' , managers' , and officers' liability.

48. "*Debtor Release*" means the release given on behalf of the Debtors and their Estates to the Released Parties as set forth in Article X.C of the Plan

49. "*Debtors*" means, collectively, each of the following: J. C. Penney Corporation, Inc.; J. C. Penney Company, Inc.; Future Source LLC; J. C. Penney Direct Marketing Services LLC; J. C. Penney Export Merchandising Corporation; J. C. Penney International, Inc.; J. C. Penney Properties, LLC; J. C. Penney Purchasing Corporation; JCP Construction Services, Inc.; JCP Media, Inc.; JCP New Jersey, LLC; JCP Procurement, Inc.; JCP Real Estate Holdings, LLC; JCP Realty, LLC; JCP Telecom Systems, Inc.; JCPenney Puerto Rico, Inc.; JCPenney Services, LLC; jcpSSC, Inc.

50. "*Deficiency Claims*" means, collectively, the First Lien Deficiency Claims and the Second Lien Notes Deficiency Claims.

51. "*Definitive Documents*" means, collectively, Plan and any Plan Supplement, the Disclosure Statement, the Confirmation Order, the Sale Order, the Disclosure Statement Order, the Asset Purchase Agreement and all documents related thereto.

52. "*Designee*" shall have the meaning set forth in the Asset Purchase Agreement.

53. "*DIP Agent*" means the "Administrative Agent" as defined in the DIP Credit Agreement.

54. "*DIP Claim*" means a Claim held by the DIP Lenders or the DIP Agent arising under or relating to the DIP Credit Agreement or the Financing Order, including any and all fees, interests paid in kind, and accrued but unpaid interest and fees arising under the DIP Credit Agreement.

55. "*DIP Collateral Agent*" means the "Collateral Agent" as defined in the DIP Credit Agreement.

56. "*DIP Credit Agreement*" means that Superpriority Senior Secured Debtor-In-Possession Credit and Guaranty Agreement evidencing the DIP Facility entered into in accordance with the Financing Order (as the same may be amended, amended and restated, modified or supplemented from time to time in accordance with its terms) terms and conditions of, and subject in all respects to the Financing Order.

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57. "*DIP Credit Bid*" means a Credit Bid of $900 million of DIP Claims.

58. "*DIP Credit Documents*" means the DIP Credit Agreement, including any amendments, modifications, supplements thereto, and together with any related notes, certificates, agreements, security agreements, documents, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related to or executed in connection therewith, which shall be in form and substance acceptable to the Debtors and the DIP Secured Parties.

59. "*DIP Facility*" means the senior secured superpriority, priming debtor-in-possession credit facility in an aggregate principal amount of $900 million, on the terms set forth in the DIP Credit Agreement and the Financing Order, as applicable.

60. "*DIP Lenders*" means the lenders under the DIP Credit Agreement.

61. "*DIP Secured Parties*" means, collectively, the DIP Lenders and the DIP Agent.

62. "*Disallowed*" means, with respect to any Claim, a Claim or any portion thereof that: (a) has been disallowed by a Final Order; (b) is scheduled as zero or as contingent, Disputed, or unliquidated and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law or the Plan; (c) is not scheduled and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law or the Plan; (d) has been withdrawn by agreement of the applicable Debtor and the holder thereof; or (e) has been withdrawn by the holder thereof.

63. "*Disbursing Agent*" means, as applicable, the Debtors, the Plan Administrator, or the Wind-Down Debtors (as applicable) or any Entity or Entities selected by the Debtors or the Plan Administrator to make or facilitate distributions contemplated under the Plan.

64. "*Disclosure Statement*" means the disclosure statement for the Plan, including all exhibits and schedules thereto.

65. "*Disclosure Statement Order*" means the order entered by the Bankruptcy Court approving the Disclosure Statement, entered on October 26, 2020 [Docket No. 1655].

66. "*Disputed*" means, with respect to any Claim or Interest, any Claim or Interest that is not yet Allowed.

67. "*Disputed Claim*" means a Claim that is not yet Allowed.

68. "*Distribution Date*" means a date on which the Disbursing Agent makes distributions to Holders of Claims and Interests pursuant to the Plan, which shall be as soon as reasonably practicable after the Effective Date.

69. "*Distribution Record Date*" means the date for determining which holders of Claims are eligible to receive distributions hereunder and shall be the Effective Date or such other date as designated in a Final Order of the Bankruptcy Court; *provided* that the Distribution Record Date shall not apply to any securities of the Debtors deposited with DTC, the holders of which shall receive a distribution in accordance with the customary procedures of DTC.

70. "*DTC*" means the Depository Trust Company.

71. "*Earnout Agreement*" has the meaning set forth in the Asset Purchase Agreement.

72. "*Effective Date*" means the date that is the first Business Day after the Confirmation Date on which (a) no stay of the Confirmation Order is in effect and (b) all conditions precedent to the occurrence of the Effective Date set forth in Article XI.A of the Plan have been satisfied or waived in accordance with Article XI.B of the Plan. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

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73. "*Entity*" means any entity, as defined in section 101(15) of the Bankruptcy Code.

74. "*Equity Commitment Letter*" shall have the meaning set forth in the Asset Purchase Agreement.

75. "*Estate*" means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to sections 301 and 541 upon the commencement of the applicable Debtor' s Chapter 11 Case.

76. "*Excluded Assets*" shall have the meaning set forth in the Asset Purchase Agreement.

77. "*Excluded Liabilities*" shall have the meaning set forth in the Asset Purchase Agreement.

78. "*Exculpated Parties*" means collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) each of the Consenting First Lien Lenders and any group thereof; (c) the Creditors' Committee and its members; (d) the Purchaser Group; (e) each current and former Affiliate of each Entity in clause (a) through the following clause (f); and (f) each Related Party of each Entity in clause (a) through this clause (f) including, among others, agents and trustees under the First Lien Debt Documents, the Term Loan Credit Documents, and the DIP Credit Documents.

79. "*Executory Contract*" means a contract to which one or more of the Debtors is a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

80. *"Existing Equity Interests*" means, collectively, the shares (or any Class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Debtor and options, warrants, rights, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any Class thereof), common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Debtors (in each case whether or not arising under or in connection with any employment agreement).

81. "*Exit ABL Facility*" means the new money asset-based loan facility in the principal amount of $2,000,000,000 in revolving loan commitments provided for under the Exit ABL Facility Documents.

82. "*Exit ABL Facility Agent*" means Wells Fargo Bank, National Association, as administrative and collateral agent under the Exit ABL Facility Agreement, solely in its capacity as such.

83. "*Exit ABL Facility Agreement*" means that certain credit, loan, or other agreement, dated as of the Effective Date, by and among, *inter alios*, OpCo, the Exit ABL Facility Agent, and the Exit ABL Facility Lenders, the terms of which shall be included in the Plan Supplement.

84. "*Exit ABL Facility Documents*" means, collectively, the Exit ABL Facility Agreement, and any and all other agreements, documents, and instruments delivered or to be entered into in connection therewith, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents.

85. "*Exit ABL Facility Lenders*" means the lenders party to the Exit ABL Facility Agreement.

86. "*Exit Facilities*" means, collectively, the Exit ABL Facility and the Exit FILO Facility.

87. "*Exit Facility Documents*" means, collectively, the Exit FILO Facility Documents and the Exit ABL Facility Documents.

88. "*Exit FILO Facility*" means the new money "first-in-last-out" term loan facility in the principal amount of $300,000,000 provided for under the Exit FILO Facility Documents.

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89. "*Exit FILO Facility Agent*" means Pathlight Capital LP, as administrative and collateral agent under the Exit FILO Facility Agreement, solely in its capacity as such.

90. "*Exit FILO Facility Agreement*" means that certain credit, loan, or other agreement, dated as of the Effective Date, by and among, *inter alios*, OpCo, the Exit FILO Facility Agent, and the Exit FILO Facility Lenders, the terms of which shall be included in the Plan Supplement.

91. "*Exit FILO Facility Documents*" means, collectively, the Exit FILO Facility Agreement, and any and all other agreements, documents, and instruments delivered or to be entered into in connection therewith, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents.

92. "*Exit FILO Facility Lenders*" means the lenders party to the Exit FILO Facility Agreement.

93. "*Federal Judgment Rate*" means the federal judgment rate in effect as of the Petition Date, compounded annually.

94. "*File*" or "*Filed*" means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

95. "*Final Order*" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, modified, or amended, is not subject to any pending stay and as to which the time to appeal, move for reargument, reconsideration, or rehearing, or seek certiorari has expired and no appeal, motion for reargument, reconsideration, or rehearing or petition for certiorari has been timely taken or Filed, or as to which any appeal that has been taken, motion for reargument, reconsideration, or rehearing that has been granted or any petition for certiorari that has been or may be Filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be Filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

96. "*Financing Order*" means the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 566].

97. "*First Lien Claims*" means any Claim on behalf of First Lien Debt.

98. "*First Lien Debt*" means, collectively, the First Lien Notes and the Term Loan.

99. "*First Lien Debt Documents*" means, collectively, the Term Loan Credit Agreement, the Prepetition Security Agreement, the First Lien Notes Indenture, and the Pari Passu Intercreditor Agreement.

100. "*First Lien Deficiency Claim*" means any unsecured Claim arising under the First Lien Debt Documents.

101. "*First Lien Lenders*" means, collectively, the First Lien Noteholders and the Term Lenders.

102. "*First Lien Noteholders*" means the parties holding the First Lien Notes as of the Voting Record Date.

103. "*First Lien Notes*" means the 5.875% Senior Secured Notes due 2023.

104. "*First Lien Notes Claim*" means any Claim on account of the First Lien Notes.

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105. "*First Lien Notes Indenture*" means that certain Indenture, dated as of June 23, 2016 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time), by and among JCP, as issuer, certain of the Company Parties, as guarantors, and Wilmington Trust, National Association, as the trustee.

106. "*First Lien Notes Trustee*" means Wilmington Trust, National Association, in its capacity as trustee under the First Lien Notes Indenture, together with its successors and permitted assigns.

107. "*General Unsecured Claim*" means any Claim, including the Deficiency Claims (if any) and the PBGC Claim, other than a Secured Claim, that is not (a) an Administrative Claim (including, for the avoidance of doubt, a Professional Fee Claim), (b) an Other Secured Claim, (c) an Other Priority Claim, or (d) an Intercompany Claim.

108. "*Governmental Unit*" shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

109. "*Impaired*" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

110. "*Indemnification Provisions*" means each of the Debtors' indemnification provisions currently in place, whether in the Debtors' bylaws, certificates of incorporation, other formation documents, board resolutions, indemnification agreements, employment contracts, or trust agreements, for the current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, other Professionals, and agents of the Debtors and such current and former directors' , officers' , and managers' respective Affiliates.

111. "*Initial Distribution Date*" means the date on which the Disbursing Agent shall make initial distributions to Holders of Claims and Interests pursuant to the Plan, which shall be as soon as reasonably practicable after the Effective Date.

112. "*Intercompany Claim*" means any Claim held by a Debtor or an Affiliate against a Debtor.

113. "*Intercompany Interest*" means any Interest held by a Debtor in another Debtor or non-Debtor subsidiary or Affiliate.

114. "*Interest*" means any Equity Security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor and any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor.

115. "*JCP*" means J. C. Penney Company, Inc., a company incorporated under the Laws of Delaware.

116. "*Judicial Code*" means title 28 of the United States Code, 28 U.S.C. §§ 1‑4001.

117. "*Law*" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

118. "*Lien*" means a lien as defined in section 101(37) of the Bankruptcy Code.

119. "*Master Lease Agreement*" shall have the meaning set forth in the Asset Purchase Agreement.

120. "*Minority First Lien Group*" means, collectively, the First Lien Lenders represented by Akin Gump Strauss Hauer & Feld LLP, Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP and Moelis & Company LLC.

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121. "*Minority First Lien Group Settlement*" means that certain settlement agreement, dated as of November 5, 2020, entered into by (i) the ad hoc group of First Lien Lenders represented by Milbank LLP, on behalf of itself and each of its members, (ii) the Minority First Lien Group, on behalf of itself and each of its members, and (iii) the Debtors, and approved by the Bankruptcy Court pursuant to the Sale Order.

122. "*New Organizational Documents*" shall mean the form of the certificates or articles of incorporation, bylaws, trust agreements, or such other applicable formation or governance documents of PropCo, which forms shall be in form and substance reasonably acceptable to the PropCo Purchaser and consistent with the approval rights set forth in the RSA and the Asset Purchase Agreement.

123. "*New PropCo Securities*" means the securities issued by PropCo in accordance with this Plan.

124. "*OpCo*" means an entity to be formed upon consummation of the OpCo Sale, in accordance with the Asset Purchase Agreement and Sale Order, which entity shall hold the OpCo Acquired Assets and OpCo Assumed Liabilities pursuant to the Sale Order.

125. "*OpCo Acquired Assets*" shall have the meaning set forth in the Asset Purchase Agreement.

126. "*OpCo Assigned Contracts*" shall have the meaning set forth in the Asset Purchase Agreement.

127. "*OpCo Assumed Liabilities*" shall have the meaning set forth in the Asset Purchase Agreement.

128. "*OpCo Available Contracts*" shall have the meaning set forth in the Asset Purchase Agreement.

129. "*OpCo Closing Date*" shall have the meaning set forth in the Asset Purchase Agreement.

130. "*OpCo Purchaser*" shall have the meaning set forth in the Asset Purchase Agreement.

131. "*OpCo Sale*" shall have the meaning set forth in the Asset Purchase Agreement.

132. "*OpCo-Company Cash Payment*" shall have the meaning set forth in the Asset Purchase Agreement.

133. "*Other Priority Claim*" means any Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim; or (b) a Priority Tax Claim, to the extent such Claim has not already been paid during the Chapter 11 Cases; *provided* that any Other Priority Claim that is an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of the Debtors or the Wind-Down Debtors and shall not be satisfied from the Administrative / Priority Claim Reserve.

134. "*Other Secured Claim*" means any Secured Claim, other than (a) an ABL Claim, (b) a DIP Claim, or (c) a First Lien Claim; *provided* that any Other Secured Claim that is an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of the Debtors or the Wind-Down Debtors and shall not be satisfied from the Administrative / Priority Claim Reserve.

135. "*Pari Passu Collateral Agent*" means Wilmington Trust, National Association, together with its permitted successors in its capacity as collateral agent pursuant to the Pari Passu Intercreditor Agreement.

136. "*Pari Passu Intercreditor Agreement*" means that certain Pari Passu Intercreditor Agreement, dated as of June 23, 2016, by and among inter alios, the Pari Passu Collateral Agent, JPMorgan Chase Bank, as Term Loan Authorized Representative for the Term Loan Secured Parties, Wilmington Trust, National Association, as Notes Authorized Representative for the Notes Secured Parties, and each of the additional Authorized Representatives party thereto from time to time, as amended, restated, amended and restated, extended, supplemented, or otherwise modified from time to time.

137. "*PBGC Claim*" means the Claim held by the Pension Benefit Guaranty Corporation in the amount of the PBGC Claim Amount

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138. "*PBGC Claim Amount*" is $500,400,000, representing the $417,000,000 amount of the asserted Claim of the Pension Benefit Guaranty Corporation plus all nondefault rate interest accrued through the Effective Date plus the amount equal to 20% of the amount of such asserted Claim, plus all nondefault rate interest accrued through the Effective Date.

139. "*Person*" has the meaning set forth in section 101(41) of the Bankruptcy Code.

140. "*Petition Date*" means May 15, 2020, the date on which the Debtors commenced the Chapter 11 Cases.

141. "*Plan"* has the meaning set forth in the Introduction.

142. "*Plan Administrator*" shall mean the person or persons identified in the Plan Supplement (as determined by the Debtors) to be appointed on the Effective Date and who will serve as the trustee and administrator for the Wind-Down Debtors as set forth in Article IV.D of the Plan.

143. "*Plan Supplement*" means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules) to be Filed by the Debtors no later than five (5) days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, including the following, as applicable: (a) the New Organizational Documents; (b) the Schedule of PropCo Assigned Contracts; (c) the Schedule of Rejected Executory Contracts and Unexpired Leases; (d) Schedule of Retained Causes of Action; (e) the Restructuring Transactions Memorandum; and (f) any additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Debtors shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement through the Effective Date, subject to the terms of the Plan, the Asset Purchase Agreement, the Sale Order, and the RSA.

144. "*Prepetition First Lien Credit Bid*" means a Credit Bid of $100 million of First Lien Debt.

145. "*Prepetition Security Agreement*" means that certain Amended and Restated Pledge and Security Agreement, dated as of June 23, 2016, by and among, J.C. Penney Corporation, Inc., as borrower, J.C. Penney Company, Inc., certain guarantors and Wilmington Trust, National Association, as Collateral Agent, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time.

146. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

147. "*Pro Rata*" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan.

148. "*Professional*" means an Entity: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

149. "*Professional Fee Claim*" means all Claims for accrued, contingent, and/or unpaid fees and expenses (including transaction and success fees) incurred by a Professional in the Chapter 11 Cases on or after the Petition Date and through and including the Effective Date that the Bankruptcy Court has not denied by Final Order. To the extent that the Bankruptcy Court or any higher court of competent jurisdiction denies or reduces by a Final Order any amount of a Professional' s fees or expenses, then those reduced or denied amounts shall no longer constitute Professional Fee Claims.

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150. "*Professional Fee Escrow Account*" means an interest-bearing escrow account to be funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Fee Escrow Amount.

151. "*Professional Fee Escrow Amount*" means the aggregate amount of Professional Fee Claims and other unpaid fees and expenses Professionals estimate they have incurred or will incur in rendering services to the Debtors prior to and as of the Effective Date, which estimates Professionals shall deliver to the Debtors as set forth in Article II of the Plan.

152. "*Proof of Claim*" means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases by the applicable Bar Date.

153. "*PropCo*" means an entity to be formed on or before the Effective Date which entity shall hold the PropCo Acquired Assets and PropCo Assumed Liabilities pursuant to the Asset Purchase Agreement and Confirmation Order.

154. "*PropCo Acquired Assets*" shall have the meaning set forth in the Asset Purchase Agreement.

155. "*PropCo Assigned Contracts*" shall have the meaning set forth in the Asset Purchase Agreement

156. "*PropCo Assumed Liabilities*" shall have the meaning set forth in the Asset Purchase Agreement.

157. "*PropCo Closing*" shall have the meaning set forth in the Asset Purchase Agreement.

158. "*PropCo Purchaser*" has the meaning set forth in the Asset Purchase Agreement.

159. "*PropCo Sale*" shall have the meaning set forth in the Asset Purchase Agreement.

160. "*PropCo Trust Agreement*" means the trust agreement entered into on or before the Effective Date between Copper BidCo LLC and the PropCo Trustee, as amended, restated, amended and restated, extended, supplemented, or otherwise modified from time to time.

161. "*PropCo Trustee*" means the Person designated as the trustee for PropCo, and any successor thereto in accordance with the PropCo Trust Agreement.

162. "*Purchaser Group*" shall have the meaning set forth in the Asset Purchase Agreement.

163. "*Purchasers*" shall have the meaning set forth in the Asset Purchase Agreement.

164. "*Quarterly Distribution Date*" means the first Business Day after the end of each quarterly calendar period (i.e., March 31, June 30, September 30, and December 31 of each calendar year) occurring after the Effective Date, or as soon thereafter as is reasonably practicable.

165. "*Reinstate*," "*Reinstated*," or "*Reinstatement*" means with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

166. "*Related Party*" means, with respect to any person or Entity, each of, and in each case in its capacity as such, current and former directors, managers, officers, investment committee members, special or other committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or Professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other Professionals and advisors of such Person or Entity, and any such Person' s or Entity' s respective heirs, executors, estates, and nominees.

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167. "*Released Party*" means each of the following, solely in its capacity as such: (a) the Debtors, the Wind-Down Debtors and the Plan Administrator; (b) the ABL Agent; (c) the ABL Lenders; (d) the Term Loan Administrative Agent; (e) the Term Lenders; (f) the First Lien Notes Trustee; (g) the First Lien Noteholders; (h) the Holders of Secured Swap Claims; (i) the Second Lien Notes Trustee; (j) the Second Lien Noteholders; (k) the Unsecured Notes Trustee; (l) the Unsecured Noteholders; (m) the Purchaser Group; (n) the DIP Agent; (o) the DIP Lenders; (p) the Consenting First Lien Lenders; (q) the PropCo Trustee; (r) the Term Loan/First Lien Notes Collateral Agent; (s) the Minority First Lien Group and its members; (t) with respect to each of the foregoing parties in clauses (a) through (s), each of such party' s current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), assigns, subsidiaries, direct and indirect equity holders, funds, portfolio companies, and management companies; and (u) with respect to each of the foregoing parties in clauses (a) through (t) (and groups consisting of such parties), each of such party' s Related Parties; and (v) all holders of Claims or Interests; *provided* that any holder of a Claim or Interest that (i) validly opts out of the releases contained in the Plan, (ii) files an objection to the releases contained in the Plan, or (iii) votes to reject the Plan shall not be a "Released Party."

168. "*Releasing Party*" means each of the following, solely in its capacity as such: (a) the Debtors, the Wind-Down Debtors and the Plan Administrator; (b) the ABL Agent; (c) the ABL Lenders; (d) the Term Loan Administrative Agent; (e) the Term Lenders; (f) the First Lien Notes Trustee; (g) the First Lien Noteholders; (h) the Holders of Secured Swap Claims; (i) the Second Lien Notes Trustee; (j) the Second Lien Noteholders; (k) the Unsecured Notes Trustee; (l) the Unsecured Noteholders; (m) the Purchaser Group; (n) the DIP Agent; (o) the DIP Lenders; (p) the Consenting First Lien Lenders; (q) the Creditors' Committee; (r) the U.S. Trustee; (s) the PropCo Trustee; (t) the Term Loan/First Lien Notes Collateral Agent; (u) the Minority First Lien Group and its members; (v) with respect to each of the foregoing parties in clauses (a) through (u), each of such party' s current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), assigns, subsidiaries, direct and indirect equity holders, funds, portfolio companies, and management companies; and (w) with respect to each of the foregoing parties in clauses (a) through (v), each of such party' s current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), assigns, subsidiaries, direct and indirect equity holders, funds, portfolio companies, and management companies; (x) with respect to each of the foregoing parties in clauses (a) through (w) (and groups consisting of such parties), each of such party' s Related Parties and (y) all holders of Claims or Interests; *provided* that any holder of a Claim or Interest that (i) validly opts out of the releases contained in the Plan, (ii) files an objection to the releases contained in the Plan, or (iii) votes to reject the Plan shall not be a "Releasing Party."

169. "*Restrictive Covenant*" means any interests, covenants, or rights applicable to such real estate assets that limit or condition the permitted use of the property such as easements, reciprocal easement agreements, construction operating and reciprocal easement agreements, operating or redevelopment agreements, covenants, licenses, or permits.

170. "*Restructuring Transactions*" means the transactions described in Article IV of the Plan.

171. "*Restructuring Transactions Memorandum*" means a document to be included in the Plan Supplement that will set forth the material components of the Restructuring Transactions, including any corporate restructuring or reorganization to be consummated in connection therewith.

172. "*RSA*" means that certain Restructuring Support Agreement, dated as of May 15, 2020, by and among the Debtors and the Consenting First Lien Lenders, including all exhibits and schedules attached thereto, as may be amended from time to time in accordance with the terms thereof.

173. "*Rules*" means Rule 501(a)(1), (2), (3) and (7) of the Securities Act.

174. "*Sale Order*" means the *Order (I) Authorizing (A) Entry Into and Performance Under the Asset Purchase Agreement And (B) the Sale of the OpCo Acquired Assets and the PropCo Acquired Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (C) Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 1814] which includes, for the avoidance of doubt, the Minority First Lien Group Settlement attached thereto as Exhibit A.

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175. "*Sale Transaction*" means, collectively, the PropCo Sale and the OpCo Sale, in accordance with the Asset Purchase Agreement, the Sale Order, and the Confirmation Order.

176. "*Schedule of PropCo Assigned Contracts*" means that certain schedule Filed with the Plan Supplement of Executory Contracts and Unexpired Leases to be assumed by the Debtors and assigned to PropCo or any subsidiary of PropCo pursuant to the Plan and in accordance with the Sale Order and Asset Purchase Agreement, as such schedule may be amended, modified, or supplemented from time to time by the Debtors in accordance with Article V of the Plan, which, including any modifications thereto, shall be acceptable to the Debtors, the Wind-Down Debtors, the Purchasers and PropCo.

177. "*Schedule of Rejected Executory Contracts and Unexpired Leases*" means that certain schedule Filed with the Plan Supplement of certain Executory Contracts and Unexpired Leases to be rejected by the Debtors pursuant to the Plan and in accordance with the Asset Purchase Agreement, as such schedule may be amended, modified, or supplemented from time to time by the Debtors in accordance with Article V of the Plan, which, including any modifications thereto, shall be acceptable to the Purchasers.

178. "*Schedule of Retained Causes of Action*" means the schedule, which will be included in the Plan Supplement, of certain Causes of Action of the Debtors that are not released, waived, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time.

179. "*Schedules*" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

180. "*Second Lien Noteholders*" means the parties holding the Second Lien Notes as of the Voting Record Date.

181. "*Second Lien Notes*" means the 8.625% Second Lien Secured Notes due 2025.

182. "*Second Lien Notes Claim*" means any Claim against a Debtor, the Estates, or property of a Debtor, including any Secured or unsecured Claim, arising under, related to, or in connection with the Second Lien Notes.

183. "*Second Lien Notes Claim Amount*" means $524,925,000, representing an amount equal to the par amount of the asserted Claim of the Second Lien Noteholders plus all nondefault rate interest accrued through the Effective Date plus the Amount equal to 20% of the par amount of such Claim, plus all nondefault rate interest accrued through the Effective Date.

184. "*Second Lien Notes Deficiency Claims*" means any unsecured Claims arising under the Second Lien Notes.

185. "*Second Lien Notes Indentures*" means those certain Indentures governing the Second Lien Notes.

186. "*Second Lien Notes Obligations*" has the meaning set forth in the Financing Order.

187. "*Second Lien Notes Trustee(s)*" means UMB Bank, N.A., in its capacity as trustee under the Second Lien Notes Indenture, together with its successors and permitted assigns.

188. "*Section 510(b) Claim*" means any Claim arising from: (a) rescission of a purchase or sale of a security of the Debtors or an Affiliate of the Debtors; (b) purchase or sale of such a security; or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

189. "*Secured*" means when referring to a Claim: (a) secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the applicable holder' s interest in the applicable Debtor' s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to the Plan, or separate order of the Bankruptcy Court, as a Secured Claim.

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190. "*Secured Claim*" means a Claim secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the applicable holder' s interest in the applicable Debtor' s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

191. "*Secured Swap Claim*" means Claims on behalf of the Secured Swap Obligations.

192. "*Secured Swap Obligations*" means the obligations of J. C. Penney Corporation, Inc. under the Swap Agreements (as defined in the ABL Credit Agreement) made on or around May 6, 2015 by J. C. Penney Corporation, Inc. and the Swap Providers.

193. "*Secured Tax Claim*" means any Secured Claim that, absent its Secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties; *provided* that any Secured Tax Claim that is an Assumed Liability under the Asset Purchase Agreement shall not be satisfied from the Administrative / Priority Claim Reserve and shall not be an obligation of the Debtors or the Wind-Down Debtors and shall not be considered a Secured Tax Claim.

194. "*Securities Act*" means the Securities Act of 1933, 15 U.S.C. §§ 77a‑77aa, together with the rules and regulations promulgated thereunder, as amended from time to time.

195. "*Security*" means any security, as defined in section 2(a)(1) of the Securities Act.

196. "*Solicitation Materials*" means all solicitation materials in respect of the Plan.

197. "*Term Lenders*" means the lenders under the Term Loan Credit Agreement.

198. "*Term Loan*" means the loan provided under the Term Loan Credit Agreement.

199. "*Term Loan Administrative Agent*" means, together, GLAS USA LLC, a limited liability company organized and existing under the Laws of the State of New Jersey, and GLAS AMERICAS LLC, a limited liability company organized and existing under the Laws of the State of New York and any of its successors, assigns, or any replacement agent appointed pursuant to the terms of the Term Loan Credit Agreement.

200. "*Term Loan Claim*" means any Claim arising under the Term Loan Credit Agreement.

201. "*Term Loan Credit Agreement*" means that certain Amended and Restated Credit and Guaranty Agreement dated as of June 23, 2016 by and among, inter alios, J. C. Penney Corporation, Inc., as borrower, certain of the Company Parties (as defined in the RSA), as guarantors, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto from time to time, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time.

202. "*Term Loan Credit Documents*" has the meaning set forth therefor in the Financing Order.

203. "*Term Loan Secured Parties*" has the meaning set forth therefor in the Financing Order.

204. "*Term Loan/First Lien Notes Collateral Agent*" means the collateral agent under the First Lien Notes Indenture and the Term Loan Credit Agreement.

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205. "*Term Loan/First Lien Notes Secured Parties*" has the meaning set forth therefor in the Financing Order.

206. "*Third-Party Release*" means the release given by each of the Releasing Parties to the Released Parties as set forth in Article X.D of the Plan.

207. "*U.S. Trustee*" means the United States Trustee for the Southern District of Texas.

208. "*U.S. Trustee Fees*" means fees arising under section 1930(a)(6) of the Judicial Code and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

209. "*Unexpired Lease*" means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

210. "*Unimpaired*" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

211. "*Unsecured Claims Earnout Pool*" means 50% of any incremental amounts payable under Section 1 of the Earnout Agreement between $110,000,000 and $140,000,000.

212. "*Unsecured Noteholder*s" means the Holders of Unsecured Notes.

213. "*Unsecured Notes*" means, collectively, the Second Lien Notes, the unsecured 5.65% notes due 2020, the 7.125% notes due 2023, the 6.9% notes due 2026, the 6.375% notes due 2036, the 7.4% debentures due 2037, and the 7.625% debentures due 2097.

214. "*Unsecured Notes Claims*" means any Claim against a Debtor, the Estates, or property of a Debtor, including any Secured or unsecured Claim, arising under, related to, or in connection with the Unsecured Notes.

215. "*Unsecured Notes Indentures*" means those certain Indentures governing the Unsecured Notes.

216. "*Unsecured Notes Trustees*" means, collectively, the trustees under the Unsecured Notes Indentures.

217. "*Voting Deadline*" means 4:00 p.m., prevailing Central Time, on November 17, 2020, which date may be extended by the Debtors.

218. "*Wells Fargo*" means Wells Fargo Bank and its managed entities.

219. "*Wells Fargo Bank*" means Wells Fargo Bank, National Association on its own behalf and on behalf of certain investment Affiliates and on behalf of certain investment Affiliates and other investment entities managed directly or indirectly by Wells Fargo.

220. "*Wind-Down*" means the wind-down, dissolution, and liquidation of the Debtors' Estates after the Effective Date.

221. "*Wind-Down Amount*" means, as contemplated by the Asset Purchase Agreement, Cash which shall be retained by the Debtors and used by the Plan Administrator to fund the Professional Fee Escrow Account and the Wind-Down in accordance with the Plan and the Confirmation Order.

222. "*Wind-Down Budget*" has the meaning set forth in the Asset Purchase Agreement.

223. "*Wind-Down Debtors*" means the Debtors, or any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date.

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224. "*Wind-Down Reserve*" means a segregated account established by the Plan Administrator established in accordance with Article VIII.C.

B. Rules of Interpretation.

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, restated, supplemented, or otherwise modified; (4) any reference to an Entity as a Holder of a Claim or Interest includes that Entity' s successors and assigns; (5) unless otherwise specified, all references herein to "Articles" are references to Articles of the Plan or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation"; (8) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (9) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with, applicable federal Law, including the Bankruptcy Code and the Bankruptcy Rules, or, if no rule of Law or procedure is supplied by federal Law (including the Bankruptcy Code and the Bankruptcy Rules) or otherwise specifically stated, the Laws of the State of Delaware, without giving effect to the principles of conflict of Laws; (10) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (11) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (12) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court' s CM/ECF system; (13) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (14) any effectuating provisions may be interpreted by the Debtors, the Wind-Down Debtors, or the Plan Administrator, in consultation with counsel to the ABL Lenders, in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, and such interpretation shall be conclusive; (15) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; (16) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (17) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company Laws; and (18) except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or the Wind-Down Debtors shall mean the Debtors and the Wind-Down Debtors, as applicable, to the extent the context requires.

C. Computation of Time.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

D. Governing Law.

Unless a rule of Law or procedure is supplied by federal Law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the Laws of the State of Delaware, without giving effect to the principles of conflict of Laws, shall govern the rights, obligations, construction, and implementation of the Plan, any

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agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided* that corporate or limited liability company governance matters relating to the Debtors not incorporated in Delaware shall be governed by the Laws of the state of incorporation or formation of the applicable Debtor.

E. Reference to Monetary Figures.

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

F. Controlling Document.

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan Supplement shall control. In the event of any inconsistency between the Plan or Plan Supplement, on the one hand, and the Confirmation Order on the other hand, the Confirmation Order shall control.

G. RSA Consent Rights and Controlling Documents.

Notwithstanding anything herein to the contrary, any and all consent rights of the parties to the RSA as set forth in the RSA with respect to the form and substance of the Plan, any Definitive Document, all exhibits to the Plan, and the Plan Supplement, including any amendments, restatements, supplements, or other modifications to such agreements and documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Section I.A of the Plan) and be fully enforceable as if stated in full herein until such time as the RSA is terminated in accordance with its terms.

H. Asset Purchase Agreement Consent Rights and Controlling Documents

Any and all consent rights of the Purchasers set forth in the Asset Purchase Agreement with respect to the form and substance of this Plan, the Confirmation Order, the Disclosure Statement, the Disclosure Statement Order, any Definitive Documents and any other documents related to the Sale Transaction, including any amendments, restatements, supplements, or other modifications to such agreements and documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Section I.A of the Plan) and be fully enforceable as if stated in full herein until such time as the Asset Purchase Agreement is terminated in accordance with its terms. Failure to reference in this Plan the rights referred to in the immediately preceding sentence as such rights relate to any document referenced in the Asset Purchase Agreement shall not impair such rights and obligations.

ARTICLE II
ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS, PRIORITY TAX CLAIMS, AND DIP CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, Priority Tax Claims, and DIP Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

A. Administrative Claims.

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtors or Plan Administrator, as applicable, to the extent an Allowed Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims) will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the amount of the unpaid portion of such Allowed Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, no later than 45 days after the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed

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Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Plan Administrator, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court; *provided* that any Allowed Administrative Claim that is an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of the Debtors or the Wind-Down Debtors; *provided*, *further*, that any Allowed Administrative Claim that is not an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of Purchasers; *provided*, that, Holders of Allowed Administrative Claims under section 507(a)(2) of the Bankruptcy Code shall be satisfied through payment in full in Cash of the due and unpaid portion of its Allowed Administrative Claim on the later of (i) the Effective Date (or as promptly as reasonably practicable thereafter) or (ii) as promptly as reasonably practicable after the date such Claim becomes due and payable

Except for Professional Fee Claims and DIP Claims, and unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Plan Administrator no later than the Administrative Claim Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order. Objections to such requests must be Filed and served on the Plan Administrator (if the Plan Administrator is not the objecting party) and the requesting party on or before the Administrative Claim Objection Bar Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, an order of the Bankruptcy Court that becomes a Final Order.

Except for Professional Fee Claims and DIP Claims, Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not file and serve such a request on or before the Administrative Claim Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, the Estates, the Wind-Down Debtors, the Plan Administrator, or the property of any of the foregoing, and such Administrative Claims shall be deemed released as of the Effective Date without the need for any objection from the Debtors, the Wind-Down Debtors or the Plan Administrator or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

B. Payment of Fees and Expenses under Financing Order.

On the Effective Date, and thereafter as invoiced, the Debtors shall pay all fees, expenses, disbursements, contribution or indemnification obligations, including without limitation, attorneys' and agents' fees, expenses, and disbursements incurred by each of the following, whether prior to or after the Petition Date and whether prior to or after the Effective Date, of the DIP Agents, the DIP Lenders, the First Lien Notes Trustee, the Term Loan Administrative Agent, and the Term Loan/First Lien Notes Collateral Agent, in each case to the extent payable or reimbursable under or pursuant to the Financing Order, the DIP Credit Agreement, the First Lien Notes Indenture, the Prepetition Security Agreement, or the Term Loan Credit Agreement, as applicable. Such fees, expenses, disbursements, contribution, or indemnification obligations shall constitute Allowed Administrative Claims. Nothing herein shall require the DIP Agents, DIP Lenders, the First Lien Notes Trustee, the Term Loan Administrative Agent, the Term Loan/ First Lien Notes Collateral Agent, or their respective Professionals, to file applications, a Proof of Claim, or otherwise seek approval of the Court as a condition to the payment of such Allowed Administrative Claims. For the avoidance of doubt, nothing herein shall be deemed to impair, discharge, or negatively impact or affect the rights of the DIP Agents, the First Lien Notes Trustee, the Term Loan Administrative Agent, and the Term Loan/First Lien Notes Collateral Agent to exercise their charging Liens pursuant to the terms of the DIP Credit Agreement, the First Lien Notes Indenture, the Prepetition Security Agreement, or the Term Loan Credit Agreement, as applicable.

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C. Professional Fee Claims.

1. Final Fee Applications and Payment of Professional Fee Claims.

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders. The Plan Administrator (or the authorized signatories to the Professional Fee Escrow Account, after consultation with the Plan Administrator) shall pay the amount of the Allowed Professional Fee Claims owing to the Professionals in Cash to such Professionals from funds held in the Professional Fee Escrow Account when such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court.

2. Professional Fee Escrow Account.

As soon as is reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, Claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Funds held in the Professional Fee Escrow Account shall not be considered property of the Estates, the Debtors, the Plan Administrator, or the Wind-Down Debtors.

The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Debtors or the Plan Administrator, as applicable, from the funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by an order of the Bankruptcy Court; *provided* that the Debtors' and the Plan Administrator' s obligations to pay Allowed Professional Fee Claims shall not be limited nor be deemed limited to funds held in the Professional Fee Escrow Account and such Allowed Professional Fee Claims shall also be payable from the Wind-Down Reserve. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, any remaining funds held in the Professional Fee Escrow Account shall promptly be paid to the Wind-Down Debtors without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

3. Professional Fee Amount.

The Professionals shall provide a reasonable and good-faith estimate of their fees and expenses incurred in rendering services to the Debtors and/or the UCC before and as of the Effective Date projected to be outstanding as of the Effective Date, and shall deliver such estimate to the Debtors no later than five days before the anticipated Effective Date; *provided* that such estimate shall not be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of the Professional' s final request for payment of Professional Fee Claims and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated as of the Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account.

4. Post-Confirmation Fees and Expenses.

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Professionals, subject to the Wind-Down Budget. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtors or the Plan Administrator, as applicable, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court; *provided* that none of the Purchasers shall be liable or otherwise responsible for the payment of any Professional Fee Claims.

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D. Priority Tax Claims.

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of, and in exchange for, each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code; *provided* that any Allowed Priority Tax Claim that is an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of the Debtors or the Wind-Down Debtor.

E. DIP Claims.

As of the Effective Date, the DIP Claims shall be Allowed and deemed to be Allowed Claims in the full amount outstanding under the DIP Credit Agreement, including principal, interest, fees, costs, other charges, and expenses. Upon the satisfaction of the Allowed DIP Claims in accordance with the terms of this Plan and the Asset Purchase Agreement, or other such treatment as contemplated by this Article II.E of the Plan on the Effective Date all Liens and security interests granted to secure such obligations shall be automatically terminated and of no further force and effect without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

Except to the extent that a Holder of an Allowed DIP Claim agrees to a less favorable treatment, and solely with respect to that portion of a Holder' s Allowed DIP Claim that has not been satisfied in accordance with the Asset Purchase Agreement prior to the Effective Date, in full and final satisfaction, compromise, settlement, and release of, and in exchange for, each such unsatisfied portion of a Holder' s Allowed DIP Claim, on the Effective Date each such Holder of an Allowed DIP Claim shall receive, pursuant to the Sale Order and the Confirmation Order, its Credit Bid Pro Rata share of the Credit Bid Distributions. The DIP Claims shall be Allowed in the aggregate amount outstanding under the DIP Facility as of the Effective Date.

Pursuant to the DIP Credit Agreement, all distributions pursuant to this Article II.E shall be made to the DIP Agent for distributions to the DIP Lenders in accordance with the DIP Credit Agreement and DIP Credit Documents unless otherwise agreed upon in writing by the DIP Agent and the Debtors. The DIP Agent shall hold or direct distributions for the benefit of the Holders of DIP Claims. The DIP Agent shall retain all rights as DIP Agent under the DIP Credit Documents in connection with the delivery of the distributions to the DIP Lenders. The DIP Agent shall not have any liability to any person with respect to distributions made or directed to be made by such DIP Agent.

ARTICLE III
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Interests.

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that such Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of such Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

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The classification of Claims and Interests against the Debtors pursuant to the Plan is as follows:

Class	Claims and Interests	Status	Voting Rights
Class 1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 3	ABL Claims and Secured Swap Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 4	First Lien Claims	Impaired	Entitled to Vote
Class 5	[Reserved]		
Class 6	Second Lien Notes Claims	Impaired	Entitled to Vote
Class 7	Unsecured Notes Claims	Impaired	Entitled to Vote
Class 8	General Unsecured Claims	Impaired	Entitled to Vote
Class 9	Intercompany Claims	Unimpaired/ Impaired	Not Entitled to Vote (Deemed to Accept or Reject)
Class 10	Intercompany Interests	Unimpaired/ Impaired	Not Entitled to Vote (Deemed to Accept or Reject)
Class 11	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
Class 12	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)

B. Treatment of Claims and Interests.

Subject to Article IV hereof, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in full and final satisfaction, compromise, settlement, and release of, and in exchange for, such Holder' s Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors and the Holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the later of the Effective Date and the date such Holder' s Claim or Interest becomes an Allowed Claim or Allowed Interest or as soon as reasonably practicable thereafter.

1. Class 1 - Other Priority Claims

(a) *Classification*: Class 1 consists of all Other Priority Claims that are not Assumed Liabilities.

(b) *Treatment*: Each holder of an Other Priority Claim shall receive payment in full in Cash or other treatment rendering such Claim Unimpaired.

(i) payment in full in Cash of the unpaid portion of its Other Priority Claim on the later of the Effective Date and such date such Other Priority Claim becomes an Allowed Other Priority Claim; or

(ii) such other treatment rendering such Holder' s Allowed Other Priority Claim Unimpaired.

(c) *Voting*: Class 1 is Unimpaired and Holders of Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Other Priority Claims are not entitled to vote to accept or reject the Plan.

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2. Class 2 - Other Secured Claims

(a) *Classification*: Class 2 consists of all Other Secured Claims that are not Assumed Liabilities.

(b) *Treatment*: Each holder of an Allowed Other Secured Claim shall receive, at the option of the applicable Debtor or Plan Administrator, as applicable:

(i) payment in full in Cash;

(ii) delivery of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code;

(iii) Reinstatement of such Claim; or

(iv) such other treatment rendering such Claim Unimpaired.

(c) *Voting*: Class 2 is Unimpaired and Holders of Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Other Secured Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 - ABL Claims and Secured Swap Claims

(a) *Classification:* Class 3 consists of all ABL Claims and Secured Swap Claims against any Debtor.

(b) *Treatment*: To the extent a holder' s Allowed ABL Claim or Allowed Secured Swap Claim has not been paid in full, in Cash prior to the Effective Date, each holder of an Allowed ABL Claim or Allowed Secured Swap Claim shall receive payment in full, in Cash.

(c) *Voting:* Class 3 is Unimpaired and Holders of ABL Claims and Secured Swap Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Holders of ABL Claims and Secured Swap Claims are not entitled to vote to accept or reject the Plan.

4. Class 4 - First Lien Claims

(a) *Classification:* Class 4 consists of all First Lien Claims against any Debtor (excluding First Lien Deficiency Claims (if any) on account thereof).

(b) *Allowance*: The First Lien Claims shall be deemed Allowed in the amount of $1,571,414,062.50 (consisting of $1,102,153,062.50 in Term Loan Claims and $469,261,000.00 in First Lien Notes Claims), plus interest, fees, and other expenses and amounts provided for in the Term Loan Credit Agreement and First Lien Notes Indenture, incurred through the Effective Date, solely to the extent Allowed by the Bankruptcy Code.

(c) *Treatment:* On the Effective Date, each holder of an Allowed First Lien Claim shall receive, subject to the terms of the Minority First Lien Group Settlement: (a) pursuant to the Sale Transaction, on account of the Aggregate Credit Bid, its Credit Bid Pro Rata share of the Credit Bid Distributions subject to distribution under the Plan and (b) its Pro Rata share of any Cash remaining in the Wind-Down Reserve, Professional Fee Escrow, Administrative / Priority Claims Reserve once all Allowed Claims entitled to payment therefrom have been satisfied and no Disputed Claims that may be entitled to payment from such sources remain to be adjudicated.

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(d) *Voting:* Class 4 is Impaired under the Plan. Therefore, holders of First Lien Claims are entitled to vote to accept or reject the Plan.

5. [Reserved]

6. Class 6 - Second Lien Notes Claims

(a) *Classification:* Class 6 consists of all Second Lien Notes Claims against any Debtor (excluding Second Lien Notes Deficiency Claims (if any) on account thereof).

(b) *Allowance*: The Second Lien Notes Claims shall be deemed Allowed in the amount of $524,925,000.

(c) *Treatment:* Except to the extent that a Holder of an Allowed Second Lien Notes Claim agrees to less favorable treatment, on the Effective Date, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed Second Lien Notes Claim, each Holder of an Second Lien Notes Claim shall receive, up to the full amount of such Holder' s Allowed Second Lien Notes Claim, its Pro Rata share of any portion of the $1,500,000 of Cash distributed to the Second Lien Notes Trustee on the Effective Date remaining after the application of such Cash to the indemnification claims of the Second Lien Notes Trustee pursuant to the Second Lien Notes Indenture, plus its Pro Rata share of (taken together with the Unsecured Notes Claims, and General Unsecured Claims) any Cash remaining in the Wind-Down Reserve once all Allowed Claims entitled to payment therefrom have been satisfied, no Disputed Claims that may be entitled to payment from such sources remain to be adjudicated, and all First Lien Claims have been satisfied in full, plus its Pro Rata share (taken together with the Unsecured Notes Claims and General Unsecured Claims) of the Unsecured Claims Earnout Pool.

(d) *Voting:* Class 6 is Impaired under the Plan. Therefore, holders of Second Lien Notes Claims are entitled to vote to accept or reject the Plan.

7. Class 7 - Unsecured Notes Claims

(a) *Classification:* Class 7 consists of all Unsecured Notes Claims against any Debtor.

(b) *Allowance*: The Unsecured Notes Claims shall be deemed Allowed in the amount of $1,346,360,131.29.

(c) *Treatment:* Except to the extent that a Holder of an Allowed Unsecured Notes Claim agrees to less favorable treatment, on the Effective Date, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed Unsecured Notes Claim, each Holder of an Unsecured Notes Claim shall receive, up to the full amount of such Holder' s Allowed Unsecured Notes Claim, its Pro Rata share of any portion of the $750,000 of Cash distributed to the Unsecured Notes Trustees on the Effective Date remaining after the application of such Cash to the indemnification claims of the Unsecured Notes Trustee

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pursuant to the Unsecured Notes Indentures, plus its Pro Rata share (taken together with the Second Lien Notes Claims and General Unsecured Claims) of any Cash remaining in the Wind-Down Reserve once all Allowed Claims entitled to payment therefrom have been satisfied, no Disputed Claims that may be entitled to payment from such sources remain to be adjudicated, and all First Lien Claims have been satisfied in full, plus its Pro Rata share (taken together with the Second Lien Notes Claims, and General Unsecured Claims) of the Unsecured Claims Earnout Pool.

(d) *Voting:* Class 7 is Impaired under the Plan. Therefore, holders of Unsecured Notes Claims are entitled to vote to accept or reject the Plan.

8. Class 8 - General Unsecured Claims

(a) *Classification:* Class 8 consists of all General Unsecured Claims.

(b) *Treatment:* Except to the extent that a Holder of a General Unsecured Claim agrees to less favorable treatment (or such General Unsecured Claim is a First Lien Deficiency Claim), on the Effective Date, in full and final satisfaction, compromise, settlement, and release of and in exchange for such Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive, (i) up to the full amount of such Holder' s General Unsecured Claim, its Pro Rata share (taken together with the Second Lien Notes Claims and Unsecured Notes Claims) of any Cash remaining in the Wind-Down Reserve once all Allowed Claims entitled to payment therefrom have been satisfied, no Disputed Claims that may be entitled to payment from such sources remain to be adjudicated, and all First Lien Claims have been satisfied in full, plus its Pro Rata share (taken together with the Second Lien Notes Claims and Unsecured Notes Claims) of the Unsecured Claims Earnout Pool; and (ii) a waiver of any preference actions arising under section 547 of the Bankruptcy Code or any comparable "preference" action arising under applicable non-bankruptcy law; *provided* that, upon the Effective Date, any potential recovery on account of any First Lien Deficiency Claim shall be deemed waived by Holders of First Lien Deficiency Claims and no Holder of a First Lien Deficiency Claim shall receive any recovery on behalf of such Claim.

(c) *Voting:* Class 8 is Impaired under the Plan. Therefore, holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

9. Class 9 - Intercompany Claims

(a) *Classification*: Class 9 consists of all Intercompany Claims.

(b) *Treatment*: Each Intercompany Claim shall be, at the option of the Debtors, setoff, contributed, distributed, compromised, settled, Reinstated, canceled and released without any distribution, or otherwise addressed in a manner determined by the Debtors.

(c) *Voting*: Holders of Claims in Class 9 are conclusively deemed to have accepted or rejected the Plan pursuant to section 1126(f) or section 1126(g) of the Bankruptcy Code, respectively. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

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10. Class 10 - Intercompany Interests

(a) *Classification*: Class 10 consists of all Intercompany Interests.

(b) *Treatment*: Each Intercompany Interest shall be, at the option of the Debtors, contributed, distributed, eliminated via merger or other corporate transaction, Reinstated, canceled and released without any distribution, or otherwise addressed in a manner determined by the Debtors.

(c) *Voting*: Holders of Interests in Class 10 are conclusively deemed to have accepted or rejected the Plan pursuant to section 1126(f) or section 1126(g) of the Bankruptcy Code, respectively. Therefore, Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

11. Class 11 - Existing Equity Interests

(a) *Classification*: Class 11 consists of all Existing Equity Interests.

(b) *Treatment*: Existing Equity Interests will be canceled, released, and extinguished, and will be of no further force or effect. Each holder of an Interest will not receive any distribution on account of such Interest.

(c) *Voting*: Class 11 is Impaired. Holders of Existing Equity Interests are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

12. Class 12 - Section 510(b)

(a) *Classification:* Class 12 consists of all Section 510(b) Claims.

(b) *Allowance*: Notwithstanding anything to the contrary herein, a Section 510(b) Claim, if any such Claim exists, may only become Allowed by Final Order of the Bankruptcy Court. The Debtors are not aware of any valid Section 510(b) Claim and believe that no such Section 510(b) Claim exists.

(c) *Treatment:* Section 510(b) Claims shall be discharged, cancelled, released, and extinguished without any distribution to holders of such Claims.

(d) *Voting:* Class 12 is Impaired and Holders (if any) of Allowed Section 510(b) Claims are conclusively deemed to have rejected the Plan. Therefore, Holders (if any) of Section 510(b) Claims are not entitled to vote to accept or reject the Plan.

C. Special Provision Governing Unimpaired Claims.

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' rights in respect of any Claims that are Unimpaired, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Claims that are Unimpaired; *provided* that the Reinstatement or other treatment of such Claims shall not be inconsistent with the Asset Purchase Agreement. Unless otherwise Allowed, Claims that are Unimpaired shall remain Disputed Claims under the Plan.

D. Elimination of Vacant Classes.

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

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E. Voting Classes, Presumed Acceptance by Non-Voting Classes.

If a Class contains Claims or Interests eligible to vote and no holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the holders of such Claims or Interests in such Class shall be deemed to have accepted the Plan.

F. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article XII of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

G. Controversy Concerning Impairment.

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Subordinated Claims.

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Plan Administrator reserve the right to reclassify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

ARTICLE IV
MEANS FOR IMPLEMENTATION OF THE PLAN

A. General Settlement of Claims and Interests.

As discussed in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute and be deemed a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court' s approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates. Subject to Article VI hereof, all distributions made to Holders of Allowed Claims in any Class are intended to be and shall be final.

B. Restructuring Transactions

On the Effective Date (or before the Effective Date, as specified in the Restructuring Transactions Memorandum), the Debtors shall take all actions set forth in the Restructuring Transactions Memorandum, and enter into any transaction and take any reasonable actions as may be necessary or appropriate to effect the transactions

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described herein, subject in all respects to the terms set forth herein, including, as applicable: (i) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable law and any other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable Entities agree; (iii) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable state or provincial Law; and (iv) all other actions that the Debtors and the Purchasers determine to be necessary or appropriate in connection with the Consummation of the Sale Transaction, including, among other things, making filings or recordings that may be required by applicable law in connection with the Plan and authorizing and directing the Term Loan/First Lien Notes Collateral Agent to effectuate the Credit Bid in accordance with the Asset Purchase Agreement and Sale Order and any assignees of the Credit Bid, if applicable, are bound by the terms and provisions of the direction to the Term Loan/First Lien Notes Collateral Agent including, among other things, the Credit Bid Distributions and Credit Bid Pro Rata.

1. Formation of New PropCo.

On or prior to the Effective Date, PropCo and certain direct or indirect subsidiaries shall be formed for the purpose of acquiring all of PropCo Acquired Assets, assuming all of the PropCo Assumed Liabilities, and issuing the New PropCo Securities pursuant to the Plan.

It is intended that PropCo qualify as a "liquidating trust" within the meaning of Treasury Regulations section 301.7701-4(d). For all federal income tax purposes, the beneficiaries of PropCo will be treated as grantors and owners thereof and will be treated as if they had received an interest in the PropCo Acquired Assets, subject to the PropCo Assumed Liabilities, and contributed the PropCo Acquired Assets, subject to the PropCo Assumed Liabilities, to PropCo in exchange for the New PropCo Securities. PropCo will have no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of PropCo. The PropCo Trustee shall be the trustee of PropCo and shall have the rights, powers, and obligations set forth in PropCo Trust Agreement.

2. Transfer of Master Lease Agreement and PropCo Acquired Assets to PropCo.

On the Effective Date, pursuant to the Asset Purchase Agreement, the Debtors and any Non-Debtor Affiliates that own assets that are PropCo Acquired Assets shall convey, assign, transfer, and deliver all such PropCo Acquired Assets to PropCo.

On the Effective Date, pursuant to the Asset Purchase Agreement, and in accordance with the terms of the Master Lease Agreement, the Debtors' interests in the Master Lease Agreement shall be assigned to, and OpCo Purchaser shall consent to such assignment of such interests to, PropCo. In connection with such assignment, the parties to the Master Lease Agreement shall, on or prior to the Effective Date, agree upon the "Pre-Agreed Severed Lease Form" and within 30 days of OpCo Closing agree upon the "Pre-Agreed PSA Form" each in accordance with the Master Lease Agreement (as each term is defined therein).

C. Sources of Consideration for Plan Distributions.

All amounts necessary for the Debtors, Wind-Down Debtors, OpCo Purchaser, and the PropCo Purchaser, as applicable, to make payments or distributions pursuant hereto shall be, in each case subject to the terms of the Asset Purchase Agreement and the Sale Order) obtained from the proceeds of the Exit ABL Facility, the Exit FILO Facility, Cash of the Debtors, and the OpCo-Company Cash Payment. Unless otherwise agreed, distributions required by this Plan on account of Allowed Claims that are Assumed Liabilities under the Asset Purchase Agreement shall be the sole responsibility of the OpCo Purchaser or PropCo Purchaser, as applicable; *provided* that any Allowed Administrative Claim that is not an Assumed Liability under the Asset Purchase Agreement shall not be an obligation of Purchasers.

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1. Payment of ABL Claims.

To the extent the ABL Claims have not been satisfied prior to Confirmation of the Plan from proceeds of the OpCo-Company Cash Payment, such ABL Claims shall be paid in full, in Cash, upon the Effective Date.

2. Creation of the Administrative / Priority Claims Reserve and the Wind-Down Reserve.

On or before the Effective Date, each of the Administrative / Priority Claims Reserve and Wind-Down Reserve shall be funded in accordance with the Asset Purchase Agreement, the Sale Order, and section 1129 of the Bankruptcy Code.

3. Payment of Cure Costs.

The Debtors shall pay all Cure Costs, if any, pursuant to sections 365 or 1123 of the Bankruptcy Code and in accordance with the Asset Purchase Agreement and Sale Order.

4. The New PropCo Securities

On the Effective Date, PropCo is authorized to issue or cause to be issued and shall, as provided for in the Restructuring Transactions Memorandum, issue the New PropCo Securities for distribution to the Holders of Allowed DIP Claims and Allowed First Lien Claims in accordance with the terms of this Plan without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule, or the vote, consent, authorization, or approval of any Person. The New PropCo Securities shall be issued and distributed free and clear of all Liens, Claims, and other Interests. All of the New PropCo Securities issued pursuant to the Plan, as contemplated by the Sale Transaction, shall be duly authorized and validly issued.

D. Plan Administrator and the Wind-Down Debtors

1. Vesting of Assets

Except as otherwise provided in the Plan, or any agreement, instrument, or other document incorporated herein or therein, on the Effective Date, the Excluded Assets of the Debtors shall vest in the Wind-Down Debtors for the purpose of liquidating the Estates, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, the Wind-Down Debtors may, at the direction of the Plan Administrator, and subject to the Asset Purchase Agreement, the Sale Order, and the Confirmation Order, use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

2. Wind-Down Debtors

On and after the Effective Date, the Wind-Down Debtors shall continue in existence for purposes of (a) resolving Disputed Claims, (b) making distributions on account of Allowed Claims as provided hereunder, (c) establishing and funding the Administrative / Priority Claims Reserve and the Wind-Down Reserve, (d) enforcing and prosecuting Claims, interests, rights, and privileges under the Causes of Action on the Schedule of Retained Causes of Action in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith, (e) filing appropriate tax returns, (f) complying with its continuing obligations under the Asset Purchase Agreement, if any, (g) liquidating all assets of the Wind-Down Debtors, and (h) otherwise administering the Plan. The Wind-Down Debtors shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (i) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court and (ii) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

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3. Plan Administrator

As set forth below, the Plan Administrator shall act for the Wind-Down Debtors in the same fiduciary capacity as applicable to a board of managers, directors, and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same) and retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under this Plan in accordance with the Wind-Down and as otherwise provided in the Confirmation Order. On the Effective Date, the authority, power, and incumbency of the Persons acting as managers, directors, and officers of the Wind-Down Debtors shall be deemed to have resigned, and the Plan Administrator shall be appointed as the sole manager, sole director, and sole officer of the Wind-Down Debtors, and shall succeed to the powers of the Wind-Down Debtors' managers, directors, and officers.

From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Wind-Down Debtors as further described in Article VII hereof. The Plan Administrator shall have the authority to sell, liquidate, or otherwise dispose of any and all of the Wind-Down Debtors' assets without any additional notice to or approval from the Bankruptcy Court.

4. Board of the Debtors

As of the Effective Date, the existing board of directors or managers, as applicable, of the Debtors shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, managers, shareholders, or members, and any remaining officers, directors, managers, or managing members of any Debtor shall be dismissed without any further action required on the part of any such Debtor, the equity holders of the Debtors, the officers, directors, or managers, as applicable, of the Debtors, or the members of any Debtor. Subject in all respects to the terms of this Plan, the Debtors shall be dissolved as soon as practicable on or after the Effective Date, but in no event later than the closing of the Chapter 11 Cases.

As of the Effective Date, the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to its affairs. Subject in all respects to the terms of this Plan, the Plan Administrator shall have the power and authority to take any action necessary to wind-down and dissolve any of the Debtors, and shall: (a) file a certificate of dissolution for any of the Debtors, together with all other necessary corporate and company documents, to effect the dissolution of any of the Debtors under the applicable laws of each applicable Debtor' s state of formation; and (b) complete and file all final or otherwise required federal, state, and local tax returns and shall pay taxes required to be paid for any of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors or their Estates for any tax incurred during the administration of such Debtor' s Chapter 11 Case, as determined under applicable tax laws; and (c) represent the interests of the Debtors or the Estates before any taxing authority in all tax matters, including any action, suit, proceeding, or audit.

The filing by the Plan Administrator of any of the Debtors' certificate of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of the Debtors or any of their Affiliates.

5. Tax Returns

After the Effective Date and subject to the Asset Purchase Agreement, the Plan Administrator shall complete and file all final or otherwise required federal, state, provincial, and local tax returns for each of the Debtors and the Wind-Down Debtors.

6. Dissolution of the Wind- Down Debtors

Upon a certification to be Filed with the Bankruptcy Court by the Plan Administrator of all distributions having been made and completion of all its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtors shall be deemed to be dissolved without any further action by the Plan Administrator, including the filing of any documents with the secretary of state for the state in which the Debtors are formed or any other jurisdiction. Notwithstanding the foregoing, the Plan Administrator shall retain the authority to take all necessary actions to dissolve the Debtors in, and withdraw the Debtors from, applicable states and provinces to the extent required by applicable law.

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E. Release of Liens

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors' Estates that have not been previously released shall be fully released, settled, and compromised, and the holder of such mortgages, deeds of trust, Liens, pledges, or other security interest against any property of the Debtors' Estates shall be authorized to take such actions as may be reasonably requested by the Debtors to evidence such releases, at the sole expense of the Debtors or Wind-Down Debtors, as applicable.

F. Cancellation of Existing Securities and Agreements.

On the Effective Date, except as otherwise specifically provided for in the Plan or the Asset Purchase Agreement: (1) the obligations under the DIP Credit Documents, First Lien Debt Documents, the ABL Credit Agreement, and any other certificate, Security, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors or giving rise to any Claim or Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Debtors that are Reinstated pursuant to the Plan) shall be cancelled, except as set forth herein, and the Wind-Down Debtors shall not have any continuing obligations thereunder; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligation of or ownership interest in the Debtors that are specifically Reinstated pursuant to the Plan) shall be released.

Notwithstanding the foregoing, (a) no Executory Contract or Unexpired Lease (i) that has been, or will be, assumed pursuant to section 365 of the Bankruptcy Code or (ii) relating to a Claim that was paid in full prior to the Effective Date, shall be terminated or cancelled on the Effective Date, (b) the First Lien Debt Documents, the Second Lien Notes Indenture, the Unsecured Notes Indentures, and the ABL Credit Agreement shall continue in effect solely for the purpose of (i) allowing Holders of the First Lien Claims and ABL Claims, as applicable, the First Lien Notes Trustee, the Second Lien Notes Trustee, and the Unsecured Notes Trustee to receive the distributions provided for under the Plan, (ii) allowing the Term Loan Administrative Agent, the Term Loan/First Lien Notes Collateral Agent, the First Lien Notes Trustee, the Second Lien Notes Trustee, the Unsecured Notes Trustee, and the ABL Agent to receive or direct distributions from the Debtors and to make further distributions to the Holders of such Claims on account of such Claims, as set forth in Article VI.A of the Plan, (iii) preserving all rights, including rights of enforcement, of the Term Loan Administrative Agent, the First Lien Notes Trustee, the Term Loan/First Lien Notes Collateral Agent, the Second Lien Notes Trustee, the Unsecured Notes Trustee, and the ABL Agent to indemnification or contribution pursuant and subject to the terms of the ABL Credit Agreement and the First Lien Debt Documents in respect of any Claim or Cause of Action asserted against the Term Loan Administrative Agent, and the First Lien Notes Trustee, as applicable, (iv) permitting each of the Term Loan/First Lien Notes Collateral Agent, the First Lien Notes Trustee, the Second Lien Notes Trustee, the Unsecured Notes Trustee, ABL Agent and the Term Loan Administrative Agent to appear in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court, and (v) preserving any rights of the DIP Agent, DIP Collateral Agent, First Lien Notes Trustee, Term Loan Administrative Agent, Term Loan/First Lien Notes Collateral Agent, Unsecured Notes Trustees, Second Lien Notes Trustees to payment of fees, expenses, and indemnification obligations as against any money or property distributable to the Holders under the relevant indenture, Prepetition Security Agreement, Term Loan Credit Agreement, or DIP Credit Agreement, including any rights to priority of payment and/or to exercise charging Liens.

Each of the ABL Agent and the Term Loan Administrative Agent shall be released and shall have no further obligation or liability except as provided in the Plan and Confirmation Order, and after the performance by the ABL Agent and the Term Loan Administrative Agent and their respective representatives and Professionals of any obligations and duties required under or related to the Plan or Confirmation Order, each of the ABL Agent and the Term Loan Administrative Agent shall be relieved of and released from any obligations and duties arising thereunder.

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Except as provided in this Plan, on the Effective Date, the DIP Agent and its respective agents, successors, and assigns shall be automatically and fully released of all of their duties and obligations associated with the DIP Credit Documents. The commitments and obligations, if any, of the DIP Lenders to extend any further or future credit or financial accommodations to any of the Debtors, any of their respective subsidiaries, or any of their respective successors or assigns under the DIP Credit Documents, as applicable, shall fully terminate and be of no further force or effect on the Effective Date.

G. Corporate Action.

Upon the Effective Date, all actions contemplated under the Plan, regardless of whether taken before, on, or after the Effective Date, shall be deemed authorized and approved in all respects, including: (1) selection of the Plan Administrator; (2) implementation of the Restructuring Transactions; (3) Consummation of the PropCo Sale and (4) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan or deemed necessary or desirable by the Debtors, before, on, or after the Effective Date involving the corporate structure of the Debtors or the Wind-Down Debtors, and any corporate action required by the Debtors or the Wind-Down Debtors in connection with the Plan or corporate structure of the Debtors or the Wind-Down Debtors shall be deemed to have occurred and shall be in effect on the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Plan Administrator. Before, on, or after the Effective Date, the appropriate officers of the Debtors or the Plan Administrator, as applicable, shall be authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Debtors or the Wind-Down Debtors, to the extent not previously authorized by the Bankruptcy Court. The authorizations and approvals contemplated by this Article IV.G shall be effective notwithstanding any requirements under non-bankruptcy law.

H. New Organizational Documents.

The New Organizational Documents will prohibit the issuance of non-voting Equity Securities to the extent required by section 1123(a)(6) of the Bankruptcy Code. After the Effective Date, the New Organizational Documents may be amended or restated as permitted by such documents and the Laws of their respective states, provinces, or countries of incorporation or organization.

I. Effectuating Documents; Further Transactions.

On and after the Effective Date, the Plan Administrator may issue, execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the Restructuring Transactions, the Sale Transaction, and the instruments issued pursuant to the Plan in the name of and on behalf of the Wind-Down Debtors, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

J. Section 1146 Exemption.

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code and applicable law, any transfers of property under the Plan (including pursuant to the Asset Purchase Agreement) or pursuant to (1) the issuance, distribution, transfer, or exchange of any debt, Equity Security, or other interest in the Debtors or the Wind-Down Debtors, including in accordance with the Asset Purchase Agreement, (2) the Restructuring Transactions, (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means, (4) the making, assignment, or recording of any lease or sublease, or (5) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan (including the Sale Transaction), shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental

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officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

K. Exemption from Securities Act Registration

The issuance of New PropCo Securities under the Plan is expected to be exempt pursuant to section 1145 of the Bankruptcy Code. Thus, the New PropCo Securities to be issued under the Plan (a) would not be "restricted securities" as defined in Rule 144(a)(3) under the Securities Act, and (b) would be freely tradable and transferable by any initial recipient thereof that (i) is not an "Affiliate" of the Debtors as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an "Affiliate" within 90 days of such transfer, and (iii) is not an entity that is an "underwriter" as defined in subsection (b) of Section 1145 of the Bankruptcy Code. Should PropCo elect on or after the Effective Date to reflect any ownership of the New PropCo Securities to be issued under the Plan through the facilities of DTC, PropCo need not provide any further evidence other than the Plan or the Confirmation Order with respect to the treatment of the New PropCo Securities (to the extent they are deemed to be securities) to be issued under the Plan under applicable securities laws. DTC shall be required to accept and conclusively rely upon the Plan and Confirmation Order in lieu of a legal opinion regarding whether the New PropCo Securities (to the extent they are deemed to be securities) to be issued under the Plan are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services. Notwithstanding anything to the contrary in the Plan, no entity (including, for the avoidance of doubt, DTC) may require a legal opinion regarding the validity of any transaction contemplated by the Plan, including, for the avoidance of doubt, whether the New PropCo Securities (to the extent they are deemed to be securities) to be issued under the Plan are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services. Notwithstanding any policies, practices, or procedures of DTC, DTC shall cooperate with and take all actions reasonably requested by a Disbursing Agent or an indenture trustee to facilitate distributions to Holders of Allowed Claims without requiring that such distribution be characterized as repayments of principal or interest. No Disbursing Agent or indenture trustee shall be required to provide indemnification or other security to DTC in connection with any distributions to Holders of Allowed Claims through the facilities of DTC.

To the extent that section 1145 of the Bankruptcy Code is inapplicable, the offering, issuance, exchange, or distribution of any securities pursuant to the Plan is or shall be conducted in a manner that is exempt from the registration requirements of section 5 of the Securities Act, pursuant to section 4(a)(2) of the Securities Act and/or the regulations promulgated thereunder (including Regulation D). To the extent such securities are issued in reliance on Section 4(a)(2) of the Securities Act or Regulation D thereunder, each will be "restricted securities" subject to resale restrictions and may be resold, exchanged, assigned or otherwise transferred only pursuant to registration, or an applicable exemption from registration under the Securities Act and other applicable law. In that regard, each recipient shall be required to make customary representations to the Debtors including that each is an "accredited investor" (within the meaning of Rule 501(a) of the Securities Act) or a qualified institutional buyer (as defined under Rule 144A promulgated under the Securities Act).

L. Preservation of Causes of Action.

In accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Article VII and Article X hereof and the Asset Purchase Agreement, the Plan Administrator shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action and notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan, other than Avoidance Actions and the Causes of Action (a) that constitute OpCo Acquired Assets or PropCo Acquired Assets, (b) released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article X, or (c) waived in accordance with Article IV.L which in the case of the foregoing (b) or (c) shall be deemed released and waived by the Debtors and the Wind-Down Debtors as of the Effective Date.

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The Plan Administrator may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Wind-Down Debtors. The Plan Administrator shall retain and may exclusively enforce any and all such Causes of Action. The Plan Administrator shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Plan Administrator will not pursue any and all available Causes of Action against it, except as assigned or transferred to the Purchaser Group in accordance with the Asset Purchase Agreement or otherwise expressly provided in the Plan, including this Article IV and Article X of the Plan. Unless any such Causes of Action against an Entity are expressly waived (including pursuant to Article IV.L of the Plan), relinquished, exculpated, released, compromised, assigned, or transferred to the Purchaser Group in accordance with the Asset Purchase Agreement, or settled in the Plan or a Final Order, the Plan Administrator expressly reserves all such Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, Claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

M. Pension Plan.

With respect to the Pension Plan, no provision of the Disclosure Statement, Plan, Confirmation Order, or section 1141 of the Bankruptcy Code shall be construed to discharge, release, or relieve any parties in interest (as defined in 29 U.S.C. § 1002(14)) to the Pension Plan from liabilities or requirements that are both (i) described within 29 U.S.C. §§ 1101 – 1114 and (ii) enforced solely by the PBGC or the Pension Plan. PBGC and the Pension Plan will not be enjoined or precluded from enforcing such liability with respect to the Pension Plan as a result of any provision of the Disclosure Statement, Plan, Confirmation Order, or section 1141 of the Bankruptcy Code.

ARTICLE V
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases.

Subject to the Sale Order (including the Assignment Procedures (as defined in the Sale Order)), on the Effective Date, except as otherwise provided herein, each Executory Contract or Unexpired Lease not previously assumed, assumed and assigned, or rejected shall be deemed automatically rejected by the applicable Debtor, unless otherwise agreed by the applicable lessor, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than those that: (1) are identified on the Schedule of Assigned Contracts or the Potentially Assigned Contracts Lists (as defined in the Sale Order); (2) have been previously assumed or rejected by the Debtors pursuant to the Assignment Procedures or any other Bankruptcy Court order; (3) are the subject of a Filed motion to assume, assume and assign, or reject such Executory Contract or Unexpired Lease (or of a Filed objection with respect to the proposed assumption and assignment of such contract) that is pending on the Effective Date; or (4) are a contract, release, or other agreement or document entered into in connection with the Plan; *provided* that with respect to any Unexpired Leases designated for non-assignment at the expiration of the OpCo Designation Rights Period or PropCo Designation Rights Period, as applicable, the effective date of rejection of such Unexpired Leases, unless otherwise agreed by the applicable lessor or pursuant to an order of the Bankruptcy Court, will be deemed to occur on the earlier of (i) the Effective Date and (ii) the date that the Debtors in writing (email sufficient) surrender the premises to the landlord, confirm the Debtors are unequivocally relinquishing possession and control of the Premises, and return the keys, key codes, or security codes, if any, to the affected landlord, or notify the affected landlord in writing (email sufficient) that the keys, key codes, and security codes, if any, are not available, but the landlord may rekey the leased premises; *provided further*, that, on the date the Debtors surrender the premises as set forth in subsection (ii) above, all property remaining in the Premises will be deemed abandoned free and clear of any interests, liens, and encumbrances and Landlords may dispose of such property without further notice or court order, unless otherwise agreed by the applicable lessors. Notwithstanding anything to the contrary in the Plan or Confirmation Order, the rights of counterparties to Unexpired Leases of nonresidential real property to object to the continued possession of such leased property, including the ability to conduct GOB sales on the properties, or failure

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to comply with any other lease terms or obligations, including payment of rents and charges and insurance obligations, in each case related to such Unexpired Lease following entry of the Confirmation Order are expressly preserved, and the rights of such counterparties to request such objection be heard on shortened notice are preserved.

Entry of the Confirmation Order shall constitute an order of the Bankruptcy Court approving, subject to and upon the occurrence of the Effective Date, the assumptions, assumptions and assignments, or rejections of the Executory Contracts and Unexpired Leases as set forth in the Plan, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, except as otherwise provided in the Plan, the Confirmation Order or the Sale Order. Any Filed motions, Executory Contracts and Unexpired Leases noticed for assumption and assignment with a pending objection that has not yet been resolved, to assume, assume and assign, or reject any Executory Contracts or Unexpired Leases that are pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order but may be withdrawn, settled, or otherwise prosecuted by the Plan Administrator, with any such disposition to be deemed to effect an assumption, assumption and assignment, or rejection, as applicable, as of the Effective Date.

Subject to the Sale Order and the Asset Purchase Agreement, each Executory Contract and Unexpired Lease assumed pursuant to the Plan or by any order of the Bankruptcy Court, which has not been assigned to a third party on or prior to the Effective Date, shall revest in the Debtors and be fully enforceable by the Plan Administrator in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal Law.

Subject to the Sale Order, to the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Notwithstanding anything to the contrary in the Plan, the Debtors or the Plan Administrator, as applicable, reserve the right to alter, amend, modify, or supplement (i) the Schedule of Rejected Executory Contracts and Unexpired Leases (a) with respect to OpCo Available Contracts, with the consent of the OpCo Purchaser, at any time up to the earlier of (x) 90 days following the OpCo Closing Date, (y) February 28, 2021, and (z) solely with respect to unexpired Leases for nonresidential real property, the deadline set forth in section 365(d)(4) of the Bankruptcy Code, consistent with the Asset Purchase Agreement (the "OpCo Designation Rights Period") and (b) with respect to PropCo Available Contracts (as defined in the Asset Purchase Agreement), with the consent of the PropCo Purchaser, at any time up to the earlier of (a) the Effective Date, (b) PropCo Closing, and (c) solely with respect to unexpired Leases for nonresidential real property, the deadline set forth in section 365(d)(4) of the Bankruptcy Code (the "PropCo Designation Rights Period"), or (ii) the Schedule of PropCo Assigned Contracts, with the consent of the PropCo Purchaser, at any time up to the expiration of the PropCo Designation Rights Period, consistent with the Asset Purchase Agreement. Notwithstanding anything to the contrary in this Article V.A, during the OpCo Designation Rights Period, the Debtors may update or correct the OpCo Available Contracts or the Potentially Assigned Contracts Lists (as defined in the Sale Order) after the Effective Date to include any Executory Contract inadvertently excluded from such schedule; *provided* that the foregoing shall not apply to Unexpired Leases of non-residential real property.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court within 30 days after the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (2) the effective date of such rejection under section 365 of the Bankruptcy Code, or (3) the Effective Date. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Estates, the Wind-Down Debtors, the Plan Administrator, or the Purchaser Group, or the property of any of the foregoing Entities without the need for any objection by the Plan Administrator or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the**

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rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.B and may be objected to in accordance with the provisions of Article IX of the Plan and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

Unless the parties to such Executory Contracts or Unexpired Leases may otherwise agree, any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment in Cash of the Cure Costs, on, or as promptly as reasonably practicable thereafter, the Effective Date; *provided* that the Cure Costs in connection with the Assigned Contracts shall be satisfied in accordance with the terms in the Asset Purchase Agreement and the Sale Order (including the Assignment Procedures). In the event of a dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the Debtors, the Purchaser Group, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, any such dispute shall be resolved and Cure Costs paid as set forth in the Sale Order (including the Assignment Procedures) or Confirmation Order.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan, the Asset Purchase Agreement, the Sale Order or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the Effective Date of assumption; *provided* that notwithstanding anything in this Plan, the Asset Purchase Agreement, the Sale Order, the Plan Supplement, or otherwise to the contrary, any non-Debtor party to any such Executory Contract or Unexpired Lease shall be entitled to receive, and nothing herein shall release or result in the satisfaction of such party' s right to receive, payment in full of all Cure Costs and all amounts that have accrued or otherwise arisen as of the Effective Date (but are not in default as of the Effective Date) with respect to any Executory Contract or Unexpired Lease.

Notwithstanding anything to the contrary in the Sale Order or the Plan (including the releases set forth herein or in the Confirmation Order), and subject to any arrangement between the respective parties to the Asset Purchase Agreement as to such liability, with respect to any assumed and assigned Unexpired Lease of nonresidential real property or any Restrictive Covenant, the Debtors, the Wind Down Debtors, the OpCo Purchaser and the PropCo Purchaser, as applicable, shall be liable to the counterparty to such Unexpired Lease or Restrictive Covenant to the extent provided for in the Asset Purchase Agreement or other agreement with the applicable counterparty or as determined by order of the Bankruptcy Court for the following: (1) amounts owed under any assumed and assigned Unexpired Lease of nonresidential real property or Restrictive Covenant that are unbilled or not yet due as of the effective date of the assignment, regardless of when such amounts accrued, such as common area maintenance, insurance, taxes, and similar charges; (2) any regular or periodic adjustment or reconciliation of charges under the assumed and assigned Unexpired Lease of nonresidential real property or Restrictive Covenant that are not due or have not been determined as of the date of the effective date of the assignment; (3) any percentage rent that may come due under the assumed and assigned Unexpired Lease of nonresidential real property; (4) indemnification obligations, if any, up to the date of the effective date of the assignment; and (5) any unpaid Cure Costs under the assumed and assigned Unexpired Lease of nonresidential real property, each calculated in accordance with the terms of any applicable amendment to such Unexpired Lease of nonresidential real property. Nothing in this Plan shall impair the right of a counterparty to an Executory Contract or Unexpired Lease to assert a claim for rejection damages in accordance with section 365 of the Bankruptcy Code, or receive an allowed General Unsecured Claim on account of such rejection damages, and nothing in this Plan or the Confirmation Order shall impair the right of a counterparty to an Unexpired Lease of nonresidential real property to object to the assumption and assignment of such Unexpired Lease on grounds of inadequate assurance of future performance.

Except as otherwise agreed by any of the Debtors and any non-Debtor counterparty to any Executory Contract or Unexpired Lease, following the assumption of any such Executory Contract or Unexpired Lease, any Filed Proofs of Claim with respect to the Executory Contract or Unexpired Lease are deemed to be disallowed and expunged upon full satisfaction of monetary defaults and, to the extent required under section 365 of the Bankruptcy Code, satisfaction of non-monetary defaults.

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D. Preexisting Obligations to the Debtors under Executory Contracts and Unexpired Leases.

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan, the Asset Purchase Agreement, or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtors (for themselves and for their successors) expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to rejected Executory Contracts or Unexpired Leases.

E. Indemnification Provisions.

All Indemnification Provisions, consistent with applicable law, currently in place (whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for the current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other Professionals of the Debtors, as applicable, shall be Reinstated and remain intact, irrevocable, and shall survive the Effective Date on terms no less favorable to such current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other Professionals of the Debtors than the Indemnification Provisions in place prior to the Effective Date.

The Debtors shall maintain tail coverage under any directors' and officers' insurance policies for the six-year period following the Effective Date on terms no less favorable than under, and with an aggregate limit of liability no less than the aggregate limit of liability under, the directors' and officers' existing insurance policies. In addition to such tail coverage, the directors' and officers' insurance policies shall remain in place in the ordinary course during the Chapter 11 Cases.

The Debtors shall not terminate or otherwise reduce the coverage under any directors' and officers' insurance policies (including the "tail policy") in effect prior to the Effective Date, and any directors and officers of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such directors and/or officers remain in such positions after the Effective Date. Notwithstanding anything herein to the contrary, the Debtors shall retain the ability to supplement such directors' and officers' insurance policies as the Debtors deem necessary, including purchasing any tail coverage.

F. Modifications, Amendments, Supplements, Restatements, or Other Agreements.

Unless otherwise provided in the Plan, the Sale Order, or the Asset Purchase Agreement, each assumed and assigned Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including easements, reciprocal easement agreements, construction operating and reciprocal easement agreements, operating or redevelopment agreements, covenants, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

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G. Reservation of Rights.

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of PropCo Assigned Contracts or the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan or the Plan Supplement, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any of the Debtors has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Plan Administrator, as applicable, shall have 45 days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease under the Plan or the Sale Order. Following the expiration of the OpCo Designation Rights Period and the PropCo Designation Rights Period, as applicable, the Debtors may not subsequently reject any Unexpired Lease previously designated as assumed or assumed and assigned and may not assume or assume and assign an Unexpired Lease previously designated as rejected on the Schedules of Assumed and Rejected Contracts absent the consent of the applicable lessor or order of the Bankruptcy Court. For the avoidance of doubt, and notwithstanding anything to the contrary in the Plan or Confirmation Order, a final and timely designation with respect to all Unexpired Leases of nonresidential real property will be made by the earlier of (i) the deadline set forth in section 365(d)(4)(A)(i) of the Bankruptcy Code; or (ii) the date of the entry of the Confirmation Order.

H. Nonoccurrence of Effective Date.

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

I. Contracts and Leases Entered Into After the Petition Date.

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor (but excluding any Assigned Contracts), will be performed by the applicable Debtor or, after the Effective Date, the Wind-Down Debtors, liable thereunder in the ordinary course of their business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases but excluding any Executory Contracts or Unexpired Leases that have been rejected as of the date of entry of the Confirmation Order) will survive and remain unaffected by entry of the Confirmation Order.

J. Sale Order Assignment Procedures.

Nothing contained in the Plan or the Confirmation Order constitutes or shall be construed as any modification or amendment of the Sale Order or the Assignment Procedures attached thereto.

ARTICLE VI
PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in the Plan, on the Initial Distribution Date (or if a Claim is not an Allowed Claim or Allowed Interest on the Initial Distribution Date, on the next Quarterly Distribution Date after such Claim or Interest becomes an Allowed Claim or Allowed Interest, or as soon as reasonably practicable thereafter), or as soon as is reasonably practicable thereafter, each Holder of an Allowed Claim shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims or Disputed Interests, distributions on account of any such Disputed Claims or Disputed Interests shall be made pursuant to the provisions set forth in Article IX hereof. Except as otherwise provided in the Plan, Holders of Claims or Interests shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

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B. Distributions on Account of Obligations of Multiple Debtors

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan, *provided* that Claims held by a single entity at different Debtors that are not based on guarantees or joint and several liability shall be entitled to the applicable distribution for such Claim at each applicable Debtor. Any such Claims shall be released pursuant to Article X of the Plan and shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code. For the avoidance of doubt, this shall not affect the obligation of each and every Debtor to pay fees payable pursuant to section 1930(a) of the Judicial Code until such time as a particular Chapter 11 Case is closed, dismissed, or converted, whichever occurs first.

C. Distributions Generally

Except as otherwise provided herein, distributions under the Plan shall be made by the Disbursing Agent. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Wind-Down Debtors.

Notwithstanding any provision of the Plan to the contrary, distributions to Holders of DIP Claims shall be made to or at the direction of the DIP Agent and distributions to Holders of First Lien Claims shall be made to or at the direction of each of the Term Loan Administrative Agent or the First Lien Notes Trustee, as applicable, each of which shall act as Disbursing Agent for distributions to the respective Holders of First Lien Claims, as applicable, in each case, at the sole expense of the Debtors or Wind-Down Debtors, as applicable. The First Lien Notes Trustee shall arrange to deliver such distributions to or on behalf of such Holders of First Lien Claims subject to the charging Lien in the First Lien Notes Indenture, and regardless of whether such distributions are made by the First Lien Notes Trustee or by the Disbursing Agent at the reasonable direction of the First Lien Notes Trustee, the charging Lien in the First Lien Notes Indenture shall attach to the distributions to Holders of the First Lien Claims in the same manner as if such distributions were made through the First Lien Notes Trustee. The First Lien Notes Trustee may establish its own record date for distribution and shall transfer or direct the transfer of such distributions through the facilities of DTC. The First Lien Notes Trustee shall have no duties or responsibility relating to any form of distribution that is not DTC eligible and the Debtors or reorganized Debtors, as applicable, shall use commercially reasonable efforts to (i) seek the cooperation of DTC with respect to effectuating distributions and the cancellation of the First Lien Notes as of the Effective Date, and (ii) seek the cooperation of the relevant bank and broker participants in the DTC system to facilitate delivery of the distribution directly to the relevant beneficial owners as soon as practicable after the Effective Date. None of the DIP Agent, the Term Loan Administrative Agent, or the First Lien Notes Trustee shall incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

Notwithstanding any provision of the Plan to the contrary, distributions to Holders of Second Lien Notes Claims shall be made to or at the direction of the Second Lien Notes Trustee and distributions to Holders of Unsecured Notes Claims shall be made to or at the direction of the Unsecured Notes Trustee, each of which shall act as Disbursing Agent for distributions to the respective Holders of Second Lien Notes Claims and Unsecured Notes Claims, as applicable, in each case, at the sole expense of the Debtors or Wind-Down Debtors, as applicable. The Second Lien Notes Trustee and the Unsecured Notes Trustee, as applicable, shall arrange to deliver such distributions to or on behalf of such Holders of Second Lien Notes Claims and Unsecured Notes Claims, subject to the charging Liens in the Second Lien Notes Indenture and the Unsecured Notes Indenture. The Second Lien Notes Trustee and the Unsecured Notes Trustee, as applicable, may, but are not required to, establish its own record date for distribution and shall transfer or direct the transfer of such distributions through the facilities of DTC. All distributions to be made to Holders of Second Lien Notes Claims and Unsecured Notes Claims through DTC shall be made eligible for distribution through the facilities of DTC and, for the avoidance of doubt, under no circumstances will the Second Lien Notes Trustee or the Unsecured Notes Trustee be responsible for making or required to make any distribution under the Plan to Holders of Allowed Notes Claims if such distribution is not eligible to be distributed through the facilities of DTC. Neither the Second Lien Notes Trustee nor the Unsecured Notes shall incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

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1. Powers of the Disbursing Agent.

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ Professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and out-of-pocket expense reimbursement Claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash from the Wind-Down Reserve.

D. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Initial Distribution Date

Except as otherwise provided herein, on the Initial Distribution Date, the Disbursing Agent shall make distributions to Holders of Allowed Claims and Interests as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' books and records or the register or related document maintained by, as applicable, the DIP Agent as of the date of any such distribution; *provided* that the manner of such distributions shall be determined at the reasonable discretion of the Disbursing Agent; *provided*, *further*, that the address for each Holder of an Allowed Claim or Interest shall be deemed to be the address set forth in, as applicable, any Proof of Claim or Proof of Interest Filed by such Holder, or, if no Proof of Claim or Proof of Interest has been Filed, the address set forth in the Schedules. If a Holder holds more than one Claim in any one Class, all Claims of the Holder may be aggregated into one Claim and one distribution may be made with respect to the aggregated Claim.

2. Quarterly Distribution Date

Except as otherwise determined by the Plan Administrator in its reasonable discretion, on each Quarterly Distribution Date or as soon thereafter as is reasonably practicable, the Disbursing Agent shall make the distributions required to be made on account of Allowed Claims and Interests under the Plan on such date. Any distribution that is not made on the Initial Distribution Date or on any other date specified herein because the Claim that would have been entitled to receive that distribution is not an Allowed Claim or Interest on such date, shall be distributed on the first Quarterly Distribution Date after such Claim or Interest is Allowed. No interest shall accrue or be paid on the unpaid amount of any distribution paid on a Quarterly Distribution Date in accordance with Article VI of the Plan.

3. Minimum Distributions.

No fractional interests in New PropCo Securities shall be distributed and no Cash shall be distributed in lieu of such fractional amounts. When any distribution pursuant to the Plan on account of an Allowed Claim or Allowed Interest (as applicable) would otherwise result in the issuance of a number of New PropCo Securities that is not a whole number, the actual distribution of New PropCo Securities shall be rounded as follows: (a) fractions of one-half (½) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (½) shall be rounded to the next lower whole number with no further payment therefore. The total number of authorized New PropCo Securities to be distributed to holders of Allowed Claims shall be adjusted as necessary to account for the foregoing rounding. For distribution purposes (including rounding), DTC will be treated as a single holder.

No Cash payment of less than $100.00 shall be made to a holder of an Allowed Claim on account of such Allowed Claim.

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4. Undeliverable Distributions and Unclaimed Property.

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of twelve months from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Wind-Down Debtors automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property Laws to the contrary), and the Claim of any Holder to such property or Interest in property shall be released and forever barred.

A distribution shall be deemed unclaimed if a Holder has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Plan Administrator of an intent to accept a particular distribution; (c) responded to the Debtors' or Plan Administrator' s requests for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

E. Manner of Payment.

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

F. Distributions on Account of Claims or Interests Allowed After the Effective Date

1. Payments and Distributions on Disputed Claims

Distributions made after the Effective Date to Holders of Disputed Claims or Interests that are not Allowed Claims or Interests as of the Effective Date, but which later become Allowed Claims or Interests, as applicable, shall be paid out of the Wind-Down Reserve, or the Administrative / Priority Claim Reserve and shall be deemed to have been made on the applicable Quarterly Distribution Date after they have actually been made, unless the Plan Administrator and the applicable Holder of such Claim or Interest agree otherwise. No interest shall accrue or be paid on a Disputed Claim before it becomes an Allowed Claim in accordance with Article IX of the Plan.

2. Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by the Plan Administrator, on the one hand, and the Holder of a Disputed Claim or Interest, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim or Interest until the Disputed Claim or Interest has become an Allowed Claim or Interest, as applicable, or has otherwise been resolved by settlement or Final Order; *provided* that if the Debtors do not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim, the Holder of such Disputed Claim shall be entitled to a distribution on account of that portion of such Claim, if any, that is not Disputed at the time and in the manner that the Disbursing Agent makes distributions to similarly-situated Holders of Allowed Claims pursuant to the Plan.

G. Compliance with Tax Requirements.

In connection with the Plan, to the extent applicable, the Debtors or the Plan Administrator, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors and Plan Administrator, as applicable, reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

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H. Allocations.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

I. No Postpetition Interest on Claims.

Unless otherwise specifically provided for in the Plan (including Article III.B.4), the Financing Order, or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, postpetition interest shall not accrue or be paid on any prepetition Claims against the Debtors, and no Holder of a prepetition Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such prepetition Claim.

J. Foreign Currency Exchange Rate.

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal, National Edition*, on the Effective Date.

K. Setoffs and Recoupment.

Except as expressly provided in this Plan, the Plan Administrator may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan distributions to be made on account of any Allowed Claim, any and all Claims, rights, and Causes of Action that such Debtor may hold against the Holder of such Allowed Claim to the extent such setoff or recoupment is either (1) agreed in amount among the relevant Debtor(s) and Holder of Allowed Claim or (2) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; *provided* that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by a Debtor or its successor of any and all Claims, rights, and Causes of Action that such Debtor or its successor may possess against the applicable Holder.

L. Claims Paid or Payable by Third Parties.

1. Claims Paid by Third Parties.

To the extent that the Holder of an Allowed Claim receives payment in full on account of such Claim from a party that is not a Debtor or Wind-Down Debtor, such Holder shall be barred from asserting such Claim against the Debtors and precluded from voting on any plans of reorganization filed in these Chapter 11 Cases and/or receiving distributions from the Debtors on account of such Claims in these Chapter 11 Cases. The Debtors or the Wind-Down Debtors, as applicable, shall be authorized to update the Claims Register to remove any Claims Filed with respect to an Executory Contract or Unexpired Lease that received payment in full on account of such Claim from a party that is not a Debtor or Wind-Down Debtor. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or Wind-Down Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the applicable Debtor or Wind-Down Debtor, to the extent the Holder' s total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties.

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the Debtors or the Wind-Down Debtors, as applicable, shall be authorized to update the Claims Register to remove the applicable portion of such Claim.

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3. Applicability of Insurance Policies.

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything herein to the contrary (including, without limitation, Article X), nothing shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtors or any other Entity may hold against any other Entity, including insurers under any policies of insurance or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

ARTICLE VII
THE PLAN ADMINISTRATOR

A. The Plan Administrator

The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to administer and distribute the amounts set forth in the Administrative / Priority Claims Reserve and the Wind-Down Reserve in accordance with the Plan, and wind-down the business and affairs of the Debtors and Wind-Down Debtors, including (all without further order of the Bankruptcy Court): (1) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Wind-Down Debtors, the Administrative / Priority Claims Reserve, and the Wind-Down Reserve; (2) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan from the Administrative / Priority Claims Reserve and the Wind-Down Reserve; (3) making distributions from the Administrative / Priority Claims Reserve and the Wind-Down Reserve as contemplated under the Plan; (4) establishing and maintaining bank accounts in the name of the Wind-Down Debtors; (5) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (6) paying all reasonable fees, expenses, debts, charges, and liabilities of the Wind-Down Debtors; (7) administering and paying taxes of the Wind-Down Debtors, including filing tax returns; (8) representing the interests of the Wind-Down Debtors or the Estates before any taxing authority in all matters, including any action, suit, proceeding, or audit; (9) complying with the Debtors' continuing obligations under the Sale Order and the Asset Purchase Agreement; and (10) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan in accordance with the Wind-Down Reserve.

The Plan Administrator may resign at any time upon 30 days' written notice delivered to the PropCo Purchaser, the Wind-Down Debtors, and the Bankruptcy Court; provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator, to be chosen by the PropCo Purchaser, with the consent of the Debtors (not to be unreasonably withheld). Upon any other vacancy of the Plan Administrator, a permanent or interim successor Plan Administrator shall be chosen by the PropCo Purchaser and Wind-Down Debtors. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Wind-Down Debtors shall be terminated.

1. Plan Administrator Rights and Powers

The Plan Administrator shall retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under this Plan in accordance with the Wind-Down Reserve, and as otherwise provided in the Confirmation Order. The Plan Administrator shall be the exclusive trustee of the assets of the Wind-Down Debtors for the purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

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2. Retention of Professionals

The Plan Administrator shall have the right, subject to the Wind-Down Reserve, to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of his or her duties. The reasonable fees and expenses of such professionals shall be paid by the Wind-Down Debtors from the Wind-Down Reserve upon the monthly submission of statements to the Plan Administrator to the extent set forth in the Wind-Down Reserve. The payment of the reasonable fees and expenses of the Plan Administrator' s retained professionals shall be made in the ordinary course of business from the Wind-Down Reserve and shall not be subject to the approval of the Bankruptcy Court.

3. Compensation of the Plan Administrator

The Plan Administrator' s compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement and paid out of the Wind-Down Reserve. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Plan Administrator in connection with such Plan Administrator' s duties shall be paid without any further notice to, or action, order, or approval of, the Bankruptcy Court in Cash from the Wind-Down Reserve if such amounts relate to any actions taken hereunder.

4. Plan Administrator Expenses

All costs, expenses and obligations incurred by the Plan Administrator in administering this Plan, the Wind-Down Debtors, or in any manner connected, incidental or related thereto, in effecting distributions from the Wind-Down Debtors thereunder (including the reimbursement of reasonable expenses) shall be incurred and paid in accordance with the Wind-Down Budget. Such costs, expenses and obligations shall be paid from the Wind-Down Reserve.

The Debtors and the Plan Administrator, as applicable, shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. However, in the event that the Plan Administrator is so ordered after the Effective Date, all costs and expenses of procuring any such bond or surety shall be paid for with Cash from the Wind-Down Reserve.

B. Wind-Down

On and after the Effective Date, the Plan Administrator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Plan Administrator shall have the power and authority to take any action necessary to wind-down and dissolve the Debtors' Estates.

As soon as practicable after the Effective Date, the Plan Administrator shall: (1) cause the Debtors and the Wind-Down Debtors, as applicable, to comply with, and abide by, the terms of the Plan, Confirmation Order, Asset Purchase Agreement, the Sale Order, and any other documents contemplated thereby; (2) to the extent applicable, file a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of their state of incorporation or formation (as applicable); and (3) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Plan Administrator without need for any action or approval by the shareholders or board of directors or managers of any Debtor. From and after the Effective Date, except with respect to Wind-Down Debtors as set forth herein, the Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have canceled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, notwithstanding the Debtors' dissolution, the Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

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The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Plan Administrator.

C. Exculpation, Indemnification, Insurance & Liability Limitation

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified, except for fraud, willful misconduct, or gross negligence, in all respects by the Wind-Down Debtors. The Plan Administrator may obtain, at the expense of the Wind-Down Debtors and with funds from the Wind-Down Reserve, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Wind-Down Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

For the avoidance of doubt, notwithstanding anything to the contrary contained herein, the Plan Administrator in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

D. Tax Returns

After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor' s Chapter 11 Case, as determined under applicable tax laws.

ARTICLE VIII
RESERVES ADMINISTERED BY THE PLAN ADMINISTRATOR

A. Establishment of Reserve Accounts

The Plan Administrator shall establish each of the Administrative / Priority Claims Reserve and the Wind-Down Reserve (which may be effected by either establishing a segregated account or establishing book entry accounts, in the sole discretion of the Plan Administrator). The Wind-Down Reserve shall be funded in the amount of the Wind-Down Amount.

B. Undeliverable Distribution Reserve

1. Deposits

If a distribution to any Holder of an Allowed Claim is returned to the Plan Administrator as undeliverable or is otherwise unclaimed, such distribution shall be deposited in a segregated, interest-bearing account, designated as an "Undeliverable Distribution Reserve," for the benefit of such Holder until such time as such distribution becomes deliverable, is claimed or is deemed to have been forfeited in accordance with Article VIII.B.2 of this Plan.

2. Forfeiture

Any Holder of an Allowed Claim that does not assert a Claim pursuant to this Plan for an undeliverable or unclaimed distribution within twelve months after the first distribution is made to such Holder shall be deemed to have forfeited its Claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such Claim for the undeliverable or unclaimed distribution against any Debtor, any Estate, the Plan Administrator, the Wind-Down Debtors, or their respective properties or assets. In such cases, any Cash or other property held by the Wind-Down Debtors in the Undeliverable Distribution Reserve for distribution on account of such Claims for undeliverable or unclaimed distributions, including the interest that has accrued on such undeliverable or unclaimed distribution while in the Undeliverable Distribution Reserve, shall become the property of the Wind-Down Debtors, notwithstanding any federal or state escheat laws to the contrary, and shall promptly be transferred to the Wind-Down Reserve to be distributed according to the priority set forth in Article VIII.D without any further action or order of the Court.

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3. Disclaimer

The Plan Administrator and his or her respective agents and attorneys are under no duty to take any action to attempt to locate any Claim Holder; provided that in his or her sole discretion, the Plan Administrator may periodically publish notice of unclaimed distributions.

4. Distribution from Reserve

Within fifteen (15) Business Days after the Holder of an Allowed Claim satisfies the requirements of this Plan, such that the distribution(s) attributable to its Claim is no longer an undeliverable or unclaimed distribution (provided that satisfaction occurs within the time limits set forth in Article VIII.B of this Plan), the Plan Administrator shall distribute out of the Undeliverable Distribution Reserve the amount of the undeliverable or unclaimed distribution attributable to such Claim.

C. Wind-Down Reserve

On the Effective Date, the Plan Administrator shall establish the Wind-Down Reserve by depositing Cash, in the amount of the Wind-Down Amount into the Wind-Down Reserve. The Wind-Down Reserve shall be used by the Plan Administrator solely to satisfy the expenses of Wind-Down Debtors and the Plan Administrator as set forth in the Plan and Wind-Down Budget; provided that all costs and expenses associated with the winding up of the Wind-Down Debtors and the storage of records and documents of the Wind-Down Debtors (and excluding, for the avoidance of doubt, records and documents related to any Acquired Assets or Assumed Liabilities) shall constitute expenses of the Wind-Down Debtors and shall be paid from the Wind-Down Reserve to the extent set forth in the Wind-Down Budget. Any amount remaining in the Wind-Down Reserve after the dissolution of the Wind-Down Debtors shall be distributed on account of the Allowed First Lien Claims until such Claims are paid in full. In no event shall the Plan Administrator be required or permitted to use its personal funds or assets for such purposes.

D. Administrative / Priority Claims Reserve

On the Effective Date, the Plan Administrator shall establish the Administrative / Priority Claims Reserve by depositing Cash in the amount of the Administrative / Priority Claims Reserve Amount into the Administrative / Priority Claims Reserve (and the Plan Administrator shall deposit Cash into or withdraw Cash from the Administrative / Priority Claims Reserve if the Administrative / Priority Claims Reserve Amount changes at any time). The Administrative / Priority Claims Reserve Amount shall be used to pay Holders of all Allowed Priority Claims, Allowed Other Priority Claims, Allowed Administrative Claims (other than Professional Fee Claims or DIP Claims), Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Secured Claims in full; *provided, however*, for the avoidance of doubt, that any such Allowed Priority Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, or other Allowed Other Secured Claims that are Assumed Liabilities shall be satisfied under the Asset Purchase Agreement and shall not be satisfied from the Administrative / Priority Claims Reserve.

If all or any portion of any such Claim shall become a Claim that is not Allowed, then the amount on deposit in the Administrative / Priority Claims Reserve attributable to such surplus or such Disallowed Claim, including the interest that has accrued on said amount while on deposit in the Administrative / Priority Claims Reserve, shall remain in the Administrative / Priority Claims Reserve to the extent that the Plan Administrator determines necessary to ensure that the Cash remaining in the Administrative / Priority Claims Reserve is sufficient to ensure that all Allowed Priority Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, or other Allowed Other Secured Claims (that are not Assumed Liabilities) will be paid in accordance with the Plan without any further action or order of the Court. Any amounts remaining in the Administrative / Priority Claims Reserve after payment of all Allowed Priority Claims, Allowed Administrative Claims, Allowed Other Priority Tax Claims, Allowed Secured Tax Claims, or other Allowed Other Secured Claims (or any amount in excess of that reasonably needed to be reserved for any Disputed Claims) shall promptly be transferred to the Wind-Down Reserve until such time the Wind-Down Debtors are dissolved in accordance with the provisions herein.

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E. Second Lien Notes Payment

On the Effective Date, the Debtors shall distribute Cash to the Second Lien Notes Trustee in the amount of $1,500,000. Such amount shall be used to pay the Second Lien Notes Claim Amount as set forth in Article III.B of this Plan.

F. Unsecured Notes Payment

On the Effective Date, the Debtors shall distribute Cash to the Unsecured Notes Trustees in the amount of $750,000. Such amount shall be used to pay the Unsecured Notes Claims as set forth in Article III.B of this Plan.

ARTICLE IX
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

A. Allowance of Claims.

After the Effective Date, subject to Article IV.L, the Plan Administrator shall have and retain any and all rights and defenses such Debtor had with respect to any Claim or Interest immediately before the Effective Date except for such rights and defenses assigned or transferred to the Purchasers or their Designee(s) in accordance with the Asset Purchase Agreement (which, for the avoidance of doubt, shall include all rights and defenses of the Debtors with respect to any Claims that constitute Assumed Liabilities (as defined in the Asset Purchase Agreement), which the PropCo Purchaser or OpCo Purchaser, as applicable, shall have and retain).

B. Claims Administration Responsibilities.

Except as otherwise specifically provided in the Plan, the Plan Administrator shall have the sole authority: (1) to File, withdraw, or litigate to judgment objections to Claims or Interests; (2) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

C. Estimation of Claims.

Before or after the Effective Date, the Debtors or the Plan Administrator, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim or Interest, including during the litigation of any objection to any Claim or Interest or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions), and the relevant Debtor or the Plan Administrator, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim or Interest. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

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D. Adjustment to Claims or Interests without Objection.

Any duplicate Claim or Interest or any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, cancelled or otherwise expunged (including pursuant to the Plan), may be adjusted or expunged (including on the Claims Register, to the extent applicable) by the Plan Administrator without a Claims objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court. Additionally, any Claim or Interest that is duplicative or redundant with another Claim against or Interest in the same Debtor or another Debtor may be adjusted or expunged on the Claims Register by the Plan Administrator without the Plan Administrator having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Time to File Objections to Claims.

Any objections to Claims shall be Filed no later than the Claims Objection Deadline.

F. Disallowance of Claims or Interests.

Any Claims or Interests held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code, or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims or Interests may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Wind-Down Debtors. All Claims Filed on account of an indemnification obligation to a director, officer, or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as provided herein or otherwise agreed, any and all Proofs of Claim Filed after the Claims Bar Date or the Administrative Claims Bar Date, as appropriate, shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.

G. No Distributions Pending Allowance.

Notwithstanding any other provision of the Plan, if any portion of a Claim or Interest is a Disputed Claim or Interest, as applicable, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest; *provided* that if the Allowed amount of a Claim or Interest is Disputed, but not the existence or nature of such Claim, such Claim or Interest shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount.

H. Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim or Allowed Interest, distributions (if any) shall be made to the Holder of such Allowed Claim or Allowed Interest (as applicable) in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim or Disputed Interest becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Claim or Interest unless required under applicable bankruptcy law.

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I. Tax Treatment of Reserves for Disputed Claims.

After the Effective Date, cash and/or a portion of the Unsecured Claims Earnout Pool may be distributed to Holders of Claims ultimately determined to be Allowed after the Effective Date (net of any expenses, including any taxes relating thereto), as provided herein, as such Claims are resolved by a Final Order or agreed to by settlement, and such amounts will be distributable on account of such Claims as such amounts would have been distributable had such Claims been Allowed Claims as of the Effective Date under Article III hereof. Pending the resolution of such Claims, a portion of the cash and/or Unsecured Claims Earnout Pool to be received by Holders of such Claims may be held back and deposited into the Wind-Down Reserve.

To the extent that any property is deposited into such a reserve, the reserve is expected to be subject to "disputed ownership fund" treatment under section 1.468B-9 of the United States Treasury Regulations. All corresponding elections with respect to such reserve shall be made, and such treatment shall be applied to the extent possible for all federal, state, local, and non-U.S. tax purposes. Pursuant to such treatment, the reserve will constitute a separate taxable entity and a separate federal income tax return shall be filed with the IRS with respect to the reserve. The reserve will be liable, as an entity, for taxes, including with respect to interest, if any, or appreciation in property between the Effective Date and date of distribution. Such taxes shall be paid out of the assets of the reserve (and reductions shall be made to amounts disbursed from the reserve to account for the need to pay such taxes).

J. No Interest.

Unless otherwise specifically provided for herein or by order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim; *provided* that interest on any Disputed Priority Tax Claim that (i) becomes an Allowed Priority Tax Claim and (ii) is treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code shall accrue and be paid in accordance with section 1129(a)(9)(C) of the Bankruptcy Code.

K. Amendments to Claims.

Except as otherwise expressly provided for in the Plan or the Confirmation Order, on or after the Claims Bar Date or the Administrative Claims Bar Date, as appropriate, a Claim may not be Filed or amended without the authorization of the Bankruptcy Court or the Plan Administrator. Absent such authorization, any new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court to the maximum extent provided by applicable law.

ARTICLE X
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Settlement, Compromise, and Release of Claims and Interests.

The assets of the Debtors and the Wind-Down Debtors are being and shall be used for the satisfaction of expense obligations and/or the payment of Claims only in the manner set forth in the Plan and shall not be available for any other purpose. Except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, compromise, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Plan Administrator), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by current or former employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations

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or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default or "event of default" by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. Therefore, notwithstanding anything in section 1141(d)(3) to the contrary, all Persons or Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors, the Wind-Down Debtors, or the Chapter 11 Cases, that occurred prior to the Effective Date, other than as expressly provided in the Plan, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors' assets in the manner contemplated by the Plan. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests subject to the occurrence of the Effective Date.

B. Release of Liens.

On the Effective Date, concurrently with the Consummation of the PropCo Sale and except as otherwise set forth in the Asset Purchase Agreement, the PropCo Acquired Assets shall be transferred to and vest in PropCo free and clear of all Liens, Claims, charges, interests, or other encumbrances pursuant to sections 363(f) and 1141(c) of the Bankruptcy Code and in accordance with the terms of the Confirmation Order, the Plan, and the Asset Purchase Agreement, each as applicable. Without limiting the foregoing, except as otherwise provided in the Asset Purchase Agreement, the Plan, the Plan Supplement, the Exit Facility Documents, or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of an Other Secured Claim, satisfaction in full of the portion of the Other Secured Claim that is Allowed as of the Effective Date and required to be satisfied pursuant to the Plan, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with Article III hereof, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert automatically to the applicable Debtor and its successors and assigns. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any Cash Collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as may be reasonably requested by the Plan Administrator to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases, and the Debtors and their successors and assigns shall be authorized to file and record such terminations or releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

C. Debtor Release.

Notwithstanding anything contained in this Plan to the contrary, effective as of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, including the service of the Released Parties in facilitating the expeditious reorganization of the Debtors and implementation of the restructuring contemplated by the Plan, the adequacy of which is hereby confirmed, on and after the Effective Date each Released Party is deemed released and discharged by each and all of the Debtors, their Estates, and the Wind-Down Debtors, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims, asserted or assertable on behalf of any of the Debtors, their Estates, or the Wind-Down Debtors, as applicable, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in Law, equity, or otherwise, that the Debtors, their Estates, or the Wind-Down Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, or that any holder of any Claim against, or Interest in, a Debtor or other Entity could have asserted on behalf of the Debtors based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Wind-Down

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Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' or the Wind-Down Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the ABL Documents, the Term Loan Credit Documents, the Restructuring Transactions, the Sale Transaction, entry into the Asset Purchase Agreement, the Exit Facilities, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or Consummation of the RSA, the Disclosure Statement, the DIP Facility, the Sale Transaction, the Asset Purchase Agreement, the Plan, the Plan Supplement, other Definitive Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the DIP Facility, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the pursuit of the Sale Transaction, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion), or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any liabilities or obligations of the PropCo Purchaser to the Debtors relating to the Asset Purchase Agreement, (2) any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including the Asset Purchase Agreement and any documents set forth in the Plan Supplement, each as applicable) executed to implement the Plan, (3) any Causes of Action listed on the Schedule of Retained Causes of Action, or (4) any Claims by any of the Debtors arising out of any ordinary course dealings between such parties.

Entry of the Confirmation Order shall constitute the Bankruptcy Court' s approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court' s finding that each Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties including, without limitation, the Released Parties' contributions to facilitating the Restructuring Transactions and implementing the Plan, (2) a good-faith settlement and compromise of such Claims; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, their respective Estates, or the Wind-Down Debtors asserting any Claim or Cause of Action released pursuant to the Debtor Release.

D. Third-Party Release.

Notwithstanding anything contained in this Plan to the contrary, effective as of the Effective Date, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions of the Released Parties in facilitating the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, to the fullest extent permissible under applicable law, as such Law may be extended or integrated after the Effective Date, on and after the Effective Date each of the Releasing Parties, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, or because of the foregoing entities, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged each Released Party from any and all Claims, interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in Law, equity, or otherwise, including any derivative Claims, asserted or assertable on behalf of any of the Debtors or their Estates, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Wind-Down Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' or the Wind-Down Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the ABL Documents, the First Lien Debt Documents, the Restructuring Transactions, the Sale

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Transaction, entry into the Asset Purchase Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or Consummation of the RSA, the Disclosure Statement, the DIP Facility, the Sale Transaction, the Asset Purchase Agreement, the Plan, the Plan Supplement, other Definitive Documents, the Exit Facilities, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Disclosure Statement, the DIP Facility, the Exit Facilities, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the pursuit of the Sale Transaction, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Releasing Party on the Plan or the Confirmation Order in lieu of such legal opinion), or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any liabilities or obligations of any Entity to the Purchaser Group relating to the Asset Purchase Agreement, (2) any post-Effective Date obligations of any party or Entity under the Plan (or preserved by the Plan), any Restructuring Transaction, or any document, instrument, or agreement (including the Asset Purchase Agreement and any documents set forth in the Plan Supplement, each as applicable) executed to implement the Plan, or (3) any Claims by any of the Debtors arising out of any ordinary course dealings between such parties.

Entry of the Confirmation Order shall constitute the Bankruptcy Court' s approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court' s finding that each Third-Party Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties, (2) a good-faith settlement and compromise of such Claims; (3) in the best interests of the Debtors and their Estates; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the Third-Party Release.

E. Exculpation.

Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any Cause of Action for any Claim related to any act or omission based on the formulation, preparation, dissemination, negotiation, entry into, filing, execution, and implementation of any transactions approved by the Bankruptcy Court in the Chapter 11 Cases, including the RSA, the Asset Purchase Agreement, the Disclosure Statement, the Plan, the Plan Supplement, other Definitive Documents, the Confirmation Order, or any Restructuring Transaction, contract, instrument, release, or other agreement or document contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order, or created or entered into in connection with the RSA, the Asset Purchase Agreement, the Disclosure Statement, or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the pursuit of the Sale Transaction, the administration and implementation of the Plan, including the issuance of any securities pursuant to the Plan or the distribution of property under the Plan or any other related agreement, and the implementation of the Sale Transaction and the Restructuring Transactions contemplated by the Plan (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors or the Wind-Down Debtors, except for Claims related to any act or omission that is determined by Final Order to have constituted actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes on, and distribution of consideration pursuant to, the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to

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the Plan. Notwithstanding the foregoing, the exculpation shall not release (1) any obligation or liability of any Entity relating to the Asset Purchase Agreement, (2) for any post-Effective Date obligation under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or (3) any Claims by any of the Debtors arising out of any ordinary course dealings between such parties.

F. Injunction.

Effective as of the Effective Date, pursuant to section 524(a) of the Bankruptcy Code, to the fullest extent permissible under applicable law, and except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released pursuant to Article X.A of the Plan, released pursuant to the Debtor Release, the Third-Party Release, or another provision of the Plan (including the release of Liens pursuant to Article X.B of the Plan), or are subject to exculpation pursuant to Article X.E of the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Wind-Down Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind, against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan.

Upon entry of the Confirmation Order, all Holders of Claims and Interests and their respective current and former employees, agents, officers, directors, principals, and direct and indirect Affiliates shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Each Holder of an Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in this Article X.F of the Plan.

For the avoidance of doubt and notwithstanding section 1141(d)(3) of the Bankruptcy Code, as of the Effective Date, except as otherwise specifically provided in the Plan and Sale Order, all Persons or Entities who have held, hold, or may hold Claims or Interests that are treated under the Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claim or Interest from the Debtors, the Estates, the Purchaser Group, or the Wind-Down Debtors, except for the receipt of the payments or distributions, if any, that are contemplated by the Plan from the Wind-Down Debtors or otherwise contemplated under the Sale Order. Such injunction will not enjoin Persons or Entities that do not consent to the Third-Party Release from pursuing any direct (but not derivative) Claims or Cause of Action such Persons or Entities may have against Released Parties other than the Debtors, the Estates, the Purchaser Group, or the Wind-Down Debtors.

G. Preservation of Setoff Rights.

Notwithstanding anything in Article X to the contrary or in the Sale Order, any right of setoff or recoupment is preserved against the Debtors, the OpCo Purchaser, PropCo Purchaser, and any of their affiliates and successors to the extent such right(s) exist under applicable law and subject to the Debtors' , OpCo Purchaser' s, PropCo Purchaser' s and any of their affiliates' and successors' , as applicable, right to contest any such right(s) of setoff or recoupment; *provided* that any rights of setoff or recoupment with respect to pre-Closing administrative claims shall only be asserted against the Debtors subject to the reservation of counterparties rights in paragraph 10 of the Sale Order; *provided*, *however*, that notwithstanding the foregoing or anything in the Plan to the contrary, the right of any Entity or Holder of a Claim or Interest to assert setoff or recoupment as a defense or affirmative defense to Claims brought against them is expressly preserved to the extent permitted by applicable law and shall not be impaired, enjoined, precluded, restricted, or otherwise limited by the Plan or the Confirmation Order.

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H. Protections Against Discriminatory Treatment.

To the maximum extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Debtors or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Debtors, or another Entity with whom the Debtors have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

I. Document Retention.

On and after the Effective Date, the Plan Administrator may maintain documents in accordance with the Debtors' standard document retention policy, as may be altered, amended, modified, or supplemented by the Plan Administrator or in connection with the terms of the Asset Purchase Agreement.

J. Reimbursement or Contribution.

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever Disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

K. Term of Injunctions or Stays.

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect on and following the Effective Date in accordance with their terms.

L. Subordination Rights.

The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, whether arising under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code, or otherwise, that a Holder of a Claim or Interest may have against other Claim or Interest Holders with respect to any distribution made pursuant to the Plan. Except as provided in the Plan, all subordination rights that a Holder of a Claim may have with respect to any distribution to be made pursuant to the Plan shall be terminated, and all actions related to the enforcement of such subordination rights shall be permanently enjoined.

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies relating to the subordination rights that a Holder of a Claim may have with respect to any Allowed Claim or any distribution to be made pursuant to the Plan on account of any Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court' s approval, as of the Effective Date, of the compromise or settlement of all such Claims or controversies and the Bankruptcy Court' s finding that such compromise or settlement is in the best interests of the Debtors, the Estates, their respective property, and Holders of Claims and Interests and is fair, equitable, and reasonable.

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M. Agreement with AHEC.

Consistent with the Bankruptcy Court' s ruling on the record at the November 24, 2020 hearing, (a) the *Ad Hoc Equity Committee's Objection to Confirmation of Amended Joint Chapter 11 Plan of Reorganization of J.C. Penney Company, Inc. and its Debtor Affiliates* [Docket No. 1980] shall serve as a valid opt-out of the releases contained in the Plan on behalf of all Holders of Existing Equity Interests and all such Holders of Existing Equity Interests shall be deemed to have validly opted-out of such releases; and (b) to the extent any Holder or Holders of Existing Equity Interests seek to assert direct claims held against the Debtors or any third-parties as of the Petition Date, such Holder or Holders shall file a motion with the Bankruptcy Court with a complaint attached, seeking a determination from the Bankruptcy Court as to whether such claims will be released under the Plan on the Effective Date (such motion, the "Direct Claims Motion"). The Bankruptcy Court shall retain exclusive jurisdiction with respect to the adjudication of the Direct Claims Motion and all parties rights are reserved with respect to the Direct Claims Motion.

ARTICLE XI
CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

A. Conditions Precedent to the Effective Date.

It shall be a condition to the occurrence of the Effective Date that the following conditions shall have been satisfied or waived pursuant to the provisions of Article XI.B hereof:

1. the RSA shall not have been terminated as to all the Consenting First Lien Lenders and remains in full force and effect as to the Consenting First Lien Lenders that remain party thereto;

2. the Plan, the Confirmation Order, the Disclosure Statement, the Sale Order, and the Disclosure Statement Order must be, in form and substance, reasonably acceptable to the Purchasers;

3. each of the Confirmation Order and the Sale Order shall be a final Order and in full force and effect;

4. PropCo shall have been formed;

5. PropCo shall have filed a registration statement on Form 10 pursuant to the Securities Exchange Act of 1934, as amended, with the Securities and Exchange Commission, in form and substance satisfactory to Required Lenders (as defined in the RSA) and shall have received initial comments reasonably satisfactory to the Required Lenders;

6. all documents necessary to consummate this Plan shall have been executed and delivered, and any conditions (other than the occurrence of the Effective Date or certification by the Debtors that the Effective Date has occurred) contained therein shall have been satisfied or waived in accordance therewith;

7. the Bankruptcy Court shall have entered the Financing Order and the Financing Order shall not have been vacated, stayed, revised, modified, or amended in any manner without the prior written consent of the DIP Agent and, to the extent set forth in the Financing Order, the DIP Collateral Agent, and there shall be no default or event of default existing under the DIP Credit Agreement or the Financing Order;

8. the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan;

9. the Wind-Down Reserve, and the Administrative / Priority Claims Reserve shall have each been funded;

10. the Professional Fee Escrow Account shall have been established and funded with the Professional Fee Escrow Amount;

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11. all accrued and unpaid reasonable and documented fees and expenses of the Consenting First Lien Lenders (including any advisors thereto) in connection with the Restructuring Transactions shall have been paid in accordance with the terms and conditions set forth in the RSA, the Financing Order, the DIP Credit Agreement, and the First Lien Debt Documents, as applicable;

12. the final version of the schedules, documents, and exhibits contained in the Plan Supplement, and all other schedules, documents, supplements and exhibits to the Plan, shall be consistent with the RSA in all material respects and otherwise approved by the parties to the RSA consistent with their respective consent and approval rights as set forth therein;

13. any and all requisite governmental, regulatory, and third-party approvals and consents shall have been obtained; and

14. the Debtors shall have implemented the Restructuring Transactions and all transactions contemplated herein in a manner consistent in all respects, the Plan, and the Plan Supplement.

B. Waiver of Conditions.

Subject to and without limiting the rights of each party to the RSA, the conditions to Consummation set forth in Article XI may be waived by the Debtors with the consent of the Purchasers without notice, leave, or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan;

C. Effect of Failure of Conditions.

If the Effective Date of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by the Debtors, any Holders, or any other Entity; (2) prejudice in any manner the rights of the Debtors, any Holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders, or any other Entity in any respect.

ARTICLE XII
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. Modification and Amendments.

Except as otherwise specifically provided in the Plan, the Debtors, with the consent of the Purchasers, reserve the right to modify the Plan, whether such modification is material or immaterial, seek Confirmation consistent with the Bankruptcy Code, and, as appropriate, not re-solicit votes on such modified Plan; *provided*, *however*, that if any such modification would (i) alter the agreements set forth in the Minority First Lien Group Settlement or (ii) except as set forth in paragraph 6 of the Minority First Lien Group Settlement, disproportionately and adversely impact the members of the Minority First Lien Group as compared to other holders of DIP Claims and First Lien Claims, the consent of the Minority First Lien Group shall be required for such modification. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in the Plan), the Debtors expressly reserve their respective rights to revoke or withdraw, to alter, amend, or modify the Plan with respect to each Debtor, one or more times, before or after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

B. Effect of Confirmation on Modifications.

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

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C. Revocation or Withdrawal of Plan.

The Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent plans, in each case subject to any applicable consent rights as set forth in the Sale Order (including the Minority First Lien Group Settlement), the Asset Purchase Agreement, the RSA, or the Financing Order. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Interests or Class of Claims or Interests), assumption, assumption and assignment, or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims, Causes of Action, or Interests; (b) prejudice in any manner the rights of such Debtor, any Holder, or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by such Debtor, any Holder, or any other Entity; *provided* that for the avoidance of doubt, if the OpCo Closing Date has occurred, then the revocation or withdrawal of the Plan, or the failure to obtain Confirmation or Consummation of the Plan, shall not affect the occurrence of the OpCo Closing Date or the consummation of the OpCo Sale.

ARTICLE XIII
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or relating to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cure Costs pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed (or assumed and assigned); (c) the Plan Administrator amending, modifying or supplementing, after the Effective Date, pursuant to Article V, the Executory Contracts and Unexpired Leases to be assumed (or assumed and assigned) or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;

4. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. adjudicate, decide, or resolve any Direct Claims Motions;

7. adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

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8. enter and implement such orders as may be necessary to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

9. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

10. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity' s obligations incurred in connection with the Plan;

11. issue injunctions, enter and implement other orders, or take such other actions as may be necessary to restrain interference by any Entity with Consummation or enforcement of the Plan;

12. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in Article X hereof and enter such orders as may be necessary to implement such releases, injunctions, and other provisions;

13. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim or Interest for amounts not timely repaid pursuant to Article VII.A hereof;

14. enter and implement such orders as are necessary if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

15. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

16. enter an order concluding or closing the Chapter 11 Cases;

17. adjudicate any and all disputes arising from or relating to distributions under the Plan;

18. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

19. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

20. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

21. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

22. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions and releases granted in the Plan, including under Article X hereof;

23. enforce all orders entered by the Bankruptcy Court in the Chapter 11 Cases; and

24. hear any other matter not inconsistent with the Bankruptcy Code.

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ARTICLE XIV
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect.

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Debtors, the Plan Administrator, and any and all Holders of Claims or Interests (irrespective of whether their Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

B. Additional Documents.

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Plan Administrator, as applicable, and all Holders receiving distributions pursuant to the Plan and all other parties in interest may, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Payment of Statutory Fees.

All fees due and payable pursuant to section 1930(a) of the Judicial Code prior to the Effective Date, including fees and expenses payable to the U.S. Trustee, shall be paid by the Debtors on the Effective Date. After the Effective Date, the Disbursing Agent or the Plan Administrator, as applicable, shall pay any and all such fees for each quarter (including any fraction thereof), and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each and every one of the Debtors shall remain obligated to pay quarterly fees to the Office of the U.S. Trustee and file quarterly reports until the earliest of that particular Debtor' s case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

D. Statutory Committee and Cessation of Fee and Expense Payment.

On the Effective Date, the Creditors' Committee shall dissolve automatically and the members thereof shall be released and discharged from all rights, duties, responsibilities, and liabilities arising on or prior to the Effective Date, from, or related to, the Chapter 11 Cases and under the Bankruptcy Code; *provided* that (a) the Creditors' Committee will remain in place after the Effective Date solely for the purpose of addressing (i) all final fee applications for all Professionals for the Creditors' Committee and (ii) the resolution of any appeals of the Confirmation Order, and (b) the members of the Creditors' Committee are discharged from all of their duties as of the date that the Creditors' Committee is dissolved with respect thereto.

E. Rights of Purchasers under the Sale Order.

Nothing contained in the Plan or the Confirmation Order constitutes or shall be construed as any modification or amendment of the rights or obligations of the Purchasers under the Sale Order.

F. Reservation of Rights.

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders unless and until the Effective Date has occurred.

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G. Successors and Assigns.

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

H. Notices.

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

1. if to the Debtors, to:

J. C. Penney Corporation, Inc.
6501 Legacy Drive
Plano, TX 75024

Attention: Bill Wafford (Chief Financial Officer)
Brandy Treadway (Senior Vice President, General Counsel & Secretary)
Email address: bwafford@jcp.com
btreadwa@jcp.com

with copies to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Facsimile: (212) 446-4900

Attention: Joshua A. Sussberg, P.C.
Christopher Marcus, P.C.
Aparna Yenamandra
Email: joshua.sussberg@kirkland.com
christopher.marcus@kirkland.com
aparna.yenamandra@kirkland.com

and

Jackson Walker L.L.P.
1401 McKinney Street, Suite 1900
Houston, Texas 77010

Facsimile: (713) 752-4200
Attention: Matthew D. Cavenaugh
Jennifer F. Wertz
E-Mail: mcavenuagh@jw.com
jwertz@jw.com

2. if to a Consenting First Lien Lender, to:

Milbank LLP
55 Hudson Yards
New York, New York 10001

Attn: Dennis F. Dunne
Andrew M. Leblanc
Thomas R. Kreller
Brian Kinney

E-mail address: ddunne@milbank.com
aleblanc@milbank.com
tkreller@milbank.com
bkinney@milbank.com

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After the Effective Date, the Plan Administrator may notify Entities that, to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entity must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

I. Entire Agreement.

Except as otherwise indicated (including with respect to the Asset Purchase Agreement and the Sale Order, as applicable), the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan. If the Effective Date does not occur, nothing herein shall be construed as a waiver by any party in interest of any or all of such party' s rights, remedies, Claims, and defenses, and such parties expressly reserve any and all of their respective rights, remedies, Claims and, defenses. This Plan and the documents comprising the Plan Supplement, including any drafts thereof (and any discussions, correspondence, or negotiations regarding any of the foregoing) shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of any party in interest of any Claim or fault or liability or damages whatsoever. Pursuant to Federal Rule of Evidence 408 and any applicable state rules of evidence, all negotiations, discussions, agreements, settlements, and compromises reflected in or related to Plan and the documents comprising the Plan Supplement is part of a proposed settlement of matters that could otherwise be the subject of litigation among various parties in interest, and such negotiations, discussions, agreements, settlements, and compromises shall not be admissible into evidence in any proceeding other than a proceeding to enforce the terms of the Plan and the documents comprising the Plan Supplement.

J. Exhibits.

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at http://cases.primeclerk.com/JCPenney or the Bankruptcy Court' s website at www.txs.uscourts.gov/bankruptcy.

K. Nonseverability of Plan Provisions.

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, Impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' and the Purchasers' consent; and (3) nonseverable and mutually dependent.

L. Votes Solicited in Good Faith.

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan and, therefore, no such parties will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan or any previous plan.

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M. Closing of Chapter 11 Cases.

The Plan Administrator shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order necessary to close the Chapter 11 Cases.

N. Waiver or Estoppel.

Each holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

O. Conflicts.

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement, the Plan Supplement, or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control.

P. Avoidance Actions.

As reflected in the Sale Order, neither OpCo Purchaser nor any Person claiming by, through or on behalf of the OpCo Purchaser (including by operation of law, sale, assignment, conveyance or otherwise) shall pursue, prosecute, litigate, institute or commence an action based on, assert, sell, convey, assign or file any Claim that relates to the Avoidance Actions, designated as an OpCo Acquired Asset pursuant to Section 1.1(t) of the Asset Purchase Agreement, or assert or use any such Avoidance Actions for defensive purposes. Nothing in the Sale Order or this Plan shall grant OpCo Purchaser standing to bring any Avoidance Actions. The Sale Order is a complete defense to any effort to pursue, litigate, institute, or commence an action based on, assert, sell, convey, assign, or file any Claim that relates to an Avoidance Action and neither the Debtors, the OpCo Purchaser, nor any other party have standing to bring any Avoidance Actions.

[*Remainder of page intentionally left blank*]

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Dated: December 12, 2020

J. C. PENNEY COMPANY, INC.
on behalf of itself and all other Debtors

/s/ Bill Wafford
Bill Wafford
Chief Financial Officer
J. C. Penney Company, Inc.

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Exhibit B

Proposed Confirmation Order and Effective Date Notice

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	)	Chapter 11
J. C. PENNEY COMPANY, INC., *et al.*,[1]	)	Case No. 20-33801 (DRJ)
Debtors.	)	(Jointly Administered)

NOTICE OF (I) ENTRY OF ORDER APPROVING THE DEBTORS' DISCLOSURE STATEMENT FOR, AND CONFIRMING, THE AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF J. C. PENNEY COMPANY, INC. AND ITS DEBTOR AFFILIATES AND (II) OCCURRENCE OF EFFECTIVE DATE

PLEASE TAKE NOTICE that on [__], 2020, the Honorable David R. Jones, United States Bankruptcy Judge for the United States Bankruptcy Court for the Southern District of Texas (the "Court"), entered the *Order Approving the Debtors' Disclosure Statement for, and Confirming, the Debtors' Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. [__]] (the "Confirmation Order") confirming the Plan[2] and approving the Disclosure Statement [Docket No. 1647] of the above-captioned debtors (the "Debtors").

PLEASE TAKE FURTHER NOTICE that the Effective Date of the Plan occurred on **[_____], 2020**.

PLEASE TAKE FURTHER NOTICE that with respect to any Unexpired Leases designated for non-assignment at the expiration of the OpCo Designation Rights Period or PropCo Designation Rights Period, as applicable, the effective date of rejection of such Unexpired Leases, unless otherwise agreed by the applicable lessor or pursuant to an order of the Court, will be deemed to occur on the earlier of (i) the Effective Date and (ii) the date that the Debtors in writing (email sufficient) surrender the premises to the landlord, confirm the Debtors are unequivocally relinquishing possession and control of the Premises, and return the keys, key codes, or security codes, if any, to the affected landlord, or notify the affected landlord in writing (email sufficient) that the keys, key codes, and security codes, if any, are not available, but the landlord may rekey the leased premises; *provided further*, that, on the date the Debtors surrender the premises as set forth in subsection (ii) above, all property remaining in the Premises will be deemed abandoned free and clear of any interests, liens, and encumbrances and Landlords may dispose of such property without further notice or court order, unless otherwise agreed by the applicable lessors.

1 A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://cases.primeclerk.com/JCPenney. The location of Debtor J. C. Penney Company, Inc.' s principal place of business and the Debtors' service address in these chapter 11 cases is 6501 Legacy Drive, Plano, Texas 75024.

2 Capitalized terms used but not otherwise defined herein have the meanings given to them in the *Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 2162] (as modified, amended, and including all supplements, the "Plan").

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PLEASE TAKE FURTHER NOTICE that the Confirmation Order and the Plan are available for inspection. You may obtain a copy of the Confirmation Order or the Plan: (a) upon request to Prime Clerk LLC (the noticing and claims agent to be retained in these chapter 11 cases) by calling (877) 720-6576 (toll free) or, for international callers, (646) 979-4417; (b) by visiting the website maintained in these chapter 11 cases at **http://cases.primeclerk.com/JCPenney**; or (c) for a fee via PACER by visiting http://www.txsb.uscourts.gov.

PLEASE TAKE FURTHER NOTICE that the Court has approved certain discharge, release, exculpation, injunction, and related provisions in Article X of the Plan.

PLEASE TAKE FURTHER NOTICE that the Plan and its provisions are binding on the Debtors, the Wind-Down Debtors, the Plan Administrator, and any holder of a Claim or an Interest and such holder' s respective successors and assigns, whether or not the Claim or the Interest of such holder is Impaired under the Plan, and whether or not such holder voted to accept the Plan.

PLEASE TAKE FURTHER NOTICE that the Plan and the Confirmation Order contain other provisions that may affect your rights. You are encouraged to review the Plan and the Confirmation Order in their entirety.

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[ ], 2020

/s/

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