

SECURITIES AND EXCHANGE COMMISSION  
 Washington, DC 20549

(Mark One)

Quarterly report pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934  
 For the quarterly period ended June 30, 1999

Transition report pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934

Commission File Number: 0-25464

DOLLAR TREE STORES, INC.  
 (Exact name of registrant as specified in its charter)

Virginia  
 (State or other jurisdiction of incorporation or organization)

54-1387365  
 (I.R.S. Employer Identification No.)

500 Volvo Parkway  
 Chesapeake, Virginia 23320  
 (Address of principal executive offices)

Telephone Number (757) 321-5000  
 (Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days:

Yes  No

As of August 6, 1999, there were 61,940,070 shares of the Registrant's Common Stock outstanding.

DOLLAR TREE STORES, INC.  
 and subsidiaries

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DOLLAR TREE STORES, INC.  
AND SUBSIDIARIES  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(In thousands, except share data)

&lt;CAPTION&gt;

	(Unaudited) June 30, 1999	December 31, 1998
	-----	-----
ASSETS		
Current assets:		
<S>	<C>	<C>
Cash and cash equivalents.....	\$ 36,502	\$ 74,644
Merchandise inventories.....	187,247	142,706
Deferred tax asset.....	7,615	6,709
Prepaid expenses and other current assets.....	7,656	7,451
	-----	-----
Total current assets.....	239,020	231,510
	-----	-----
Net property and equipment.....	134,195	122,503
Deferred tax asset.....	2,420	2,194
Goodwill, net of accumulated amortization.....	41,587	42,551
Other assets .....	5,849	6,429
	-----	-----
TOTAL ASSETS.....	\$423,071	\$405,187
	=====	=====

&lt;CAPTION&gt;

LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
<S>	<C>	<C>
Current portion of long-term debt (note 4).....	\$ 25,000	\$ 16,500
Accounts payable.....	60,322	53,030
Income taxes payable.....	4,936	21,353
Other current liabilities.....	18,124	26,445
	-----	-----
Total current liabilities.....	108,382	117,328
	-----	-----
Long-term debt, excluding current portion.....	24,000	30,000
Other liabilities.....	8,405	9,043
	-----	-----
Total liabilities.....	140,787	156,371
	-----	-----
Shareholders' equity (note 3):		
Common stock, par value \$0.01. Authorized 300,000,000 shares, 61,887,293 shares issued and outstanding at June 30, 1999 and authorized 100,000,000 shares, 61,380,418 shares issued and outstanding at December 31, 1998.....	619	614
Additional paid-in capital.....	66,541	53,030
Retained earnings.....	215,124	195,172
	-----	-----
Total shareholders' equity.....	282,284	248,816
	-----	-----
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY.....	\$423,071	\$405,187
	=====	=====

See accompanying Notes to Condensed Consolidated Financial Statements

&lt;/TABLE&gt;

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DOLLAR TREE STORES, INC.  
AND SUBSIDIARIES  
CONDENSED CONSOLIDATED INCOME STATEMENTS  
(In thousands, except per share data)  
(Unaudited)

<CAPTION>

	Three Months Ended June 30,		Six Months Ended June 30,	
	1999	1998	1999	1998
<S>	<C>	<C>	<C>	<C>
Net sales .....	\$253,216	\$205,209	\$480,259	\$385,808
Cost of sales.....	159,525	131,130	305,703	247,740
Merger related costs (note 3).....	443	--	443	--
	-----	-----	-----	-----
Gross profit.....	93,248	74,079	174,113	138,068
	-----	-----	-----	-----
Selling, general and administrative expenses:				
Operating expenses.....	61,710	49,463	117,835	95,460
Merger related expenses (note 3).....	607	--	607	--
Depreciation and amortization.....	6,881	4,889	13,101	9,303
	-----	-----	-----	-----
Total selling, general and administrative expenses.....	69,198	54,352	131,543	104,763
	-----	-----	-----	-----
Operating income.....	24,050	19,727	42,570	33,305
Interest expense.....	670	1,051	1,152	1,759
	-----	-----	-----	-----
Income before income taxes.....	23,380	18,676	41,418	31,546
Provision for income taxes.....	8,876	6,870	15,587	11,760
	-----	-----	-----	-----
Net income.....	\$ 14,504	\$ 11,806	\$ 25,831	\$ 19,786
	=====	=====	=====	=====
Net income per share (note 2):				
Basic net income per share.....	\$ 0.23	\$ 0.19	\$ 0.42	\$ 0.32
	=====	=====	=====	=====
Diluted net income per share .....	\$ 0.21	\$ 0.17	\$ 0.38	\$ 0.29
	=====	=====	=====	=====
Pro forma income data (note 3):				
Net income.....	\$ 14,504	\$ 11,806	\$ 25,831	\$ 19,786
Pro forma adjustment for C-corporation income taxes.....	271	299	505	395
	-----	-----	-----	-----
Pro forma net income.....	\$ 14,233	\$ 11,507	\$ 25,326	\$ 19,391
	=====	=====	=====	=====
Pro forma basic net income per share.....	\$ 0.23	\$ 0.19	\$ 0.41	\$ 0.32
	=====	=====	=====	=====
Pro forma diluted net income per share.....	\$ 0.21	\$ 0.17	\$ 0.37	\$ 0.29
	=====	=====	=====	=====
Weighted average number of common shares outstanding.....	61,815	61,182	61,679	61,051
	=====	=====	=====	=====
Weighted average number of common shares and dilutive potential common shares outstanding.....	68,035	67,644	67,972	67,482
	=====	=====	=====	=====

See accompanying Notes to Condensed Consolidated Financial Statements

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DOLLAR TREE STORES, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(In thousands)  
(Unaudited)

<CAPTION>

	Six Months Ended June 30,	
	----- 1999 ----	1998 ----
<S>	<C>	<C>
Cash flows from operating activities:		
Net income .....	\$ 25,831	\$ 19,786
	-----	-----
Adjustments to reconcile net income to net cash used in operating activities:		
Depreciation and amortization.....	13,101	9,303
Loss (gain) on disposal of property and equipment.....	(98)	402
Provision for deferred income taxes.....	(1,132)	(999)
Changes in assets and liabilities increasing (decreasing) cash and cash equivalents:		
Merchandise inventories.....	(44,541)	(68,417)
Prepaid expenses and other current assets.....	(205)	814
Other assets .....	339	(115)
Accounts payable.....	7,565	(922)
Income taxes payable.....	(12,175)	(13,521)
Other current liabilities.....	(8,343)	(1,517)
Other liabilities.....	(288)	500
	-----	-----
Total adjustments.....	(45,777)	(74,472)
	-----	-----
Net cash used in operating activities .....	(19,946)	(54,686)
	-----	-----
Cash flows from investing activities:		
Capital expenditures .....	(23,952)	(20,182)
Proceeds from sale of property and equipment.....	86	138
	-----	-----
Net cash used in investing activities.....	(23,866)	(20,044)
	-----	-----
Cash flows from financing activities:		
Distributions paid (note 3).....	(1,410)	(1,025)
Proceeds from long-term debt.....	2,500	89,200
Repayment of long-term debt and facility fees.....	--	(57,407)
Net change in notes payable to bank.....	--	1,919
Principal payments under capital lease obligations.....	(225)	(183)
Proceeds from stock issued pursuant to stock-based compensation plans.....	4,805	3,520
	-----	-----
Net cash provided by financing activities.....	5,670	36,024
	-----	-----
Net decrease in cash and cash equivalents.....	(38,142)	(38,706)
Cash and cash equivalents at beginning of period.....	74,644	47,638
	-----	-----
Cash and cash equivalents at end of period.....	\$ 36,502	\$ 8,932
	=====	=====

See accompanying Notes to Condensed Consolidated Financial Statements

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DOLLAR TREE STORES, INC.  
AND SUBSIDIARIES  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. BASIS OF PRESENTATION

The condensed consolidated financial statements of Dollar Tree Stores, Inc. and subsidiaries (the Company) at June 30, 1999, and for the three- and six-month periods then ended, are unaudited and reflect all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary for a fair presentation of the financial position and operating results for the interim periods. The condensed consolidated income statements for the periods ended June 30, 1998 reflect the results of operations for Dollar Tree Stores, Inc. and Tehan's Merchandising, Inc. (Only \$One) for the three- and six-month periods then ended combined with the Step Ahead Investments, Inc. (Step Ahead) three- and six-month periods ended July 26, 1998.



rate to a fixed rate and reduces the Company's exposure to interest rate fluctuations. Under this agreement, the Company pays interest to the bank which provided the swap at a fixed rate of 5.5%. In addition, the bank pays the Company at a variable interest rate, which approximates the rate on the Loan Agreement, which was 5.2% at June 30, 1999. The swap, effective through April 1, 2009, is for the entire amount outstanding under the Loan Agreement. The bank which provided the swap has the option to cancel it on April 1, 2006. The Loan Agreement amount is included in the current portion of long-term debt.

#### 5. LEASES

During June 1999, the Company entered into an \$18.0 million operating lease agreement for the purpose of financing construction costs to build a new distribution center in Stockton, California, which will replace the existing leased facilities located in the Sacramento, California area. Under this agreement, the lessor purchases the property, pays for the construction costs and subsequently leases the facility to the Company. The initial lease term is five years. The lease provides for a residual value guarantee and includes a purchase option based on the outstanding cost of the property. When the assets are placed into service, the Company will estimate its liability, if any, under the residual value guarantee and record additional rent expense on a straight-line basis over the remaining lease term.

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During April 1999, the Company entered into an agreement to sublease the Memphis distribution facility through March 2000 with an option for the sublessee to renew the lease through March 2001.

#### 6. STORE OPENING COSTS

In accordance with Statement of Position (SOP) 98-5, Reporting on the Costs of Start-up Activities, effective January 1, 1999, the Company expenses store opening costs as incurred. The impact of the implementation of this SOP was not material to the Company's financial results.

#### Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

A WARNING ABOUT FORWARD-LOOKING STATEMENTS: We have made "forward-looking statements" in this document as that term is used in the Private Securities Litigation Reform Act of 1995. Such statements are based on the beliefs and assumptions of our management, and on information currently available to our management. Our assumptions, beliefs and current information could be mistaken. Forward-looking statements include any statements preceded by, followed by or including words such as "believe," "anticipate," "expect," "intend," "plan," "view" or "estimate." Forward-looking statements also include, and are subject to risks relating to, our future operations, performance, or financial condition such as:

- comparable store net sales trends,
- expansion plans and store openings,
- dependence on imports and vulnerability to foreign economic and political conditions as well as import restrictions, duties and tariffs,
- increases in shipping costs, the minimum wage, and other costs,
- our ability to sublease the Memphis facility beyond March 2000, and
- Year 2000 compliance.

Any statements concerning our future operations, performance, or financial condition could be inaccurate or incorrect.

#### Recent Development

On June 30, 1999, Dollar Tree merged with the operator of 24 Only \$One stores. The Only \$One stores are located in central and upstate New York and average approximately 10,000 square feet in size. We issued 501,600 shares of our common stock in exchange for all the outstanding common stock of Only \$One. We accounted for the merger as a pooling of interests. Under this form of accounting, we combined the condensed consolidated financial statements of Dollar Tree with those of Only \$One, not only since the date of the merger, but also retroactively. As a result, we have adjusted our condensed consolidated financial statements to reflect results of operations as if Only \$One had been a part of Dollar Tree throughout all the periods discussed. Quarterly combined financial data, which combines Dollar Tree and Only \$One, were filed on a Form 8-K on July 22, 1999.

The Three Months Ended June 30, 1999 Compared To The Three Months Ended June 30, 1998

Net Sales. Net sales increased 23.4% to \$253.2 million for the three months ended June 30, 1999 from \$205.2 million for the three months ended June 30, 1998. We attribute this \$48.0 million increase to sales at new stores opened in 1999 and 1998 which are not included in our comparable store net sales calculation and a 1.8% increase in comparable store net sales in the second quarter of 1999.

We opened 66 new stores and closed 2 stores during the second quarter of 1999, compared to 61 new stores opened and one store closed in the second quarter of 1998. We plan to expand by 230 to 235 stores in 1999, including the 24 Only \$One stores acquired in June 1999. Our management anticipates that future net sales growth will come mostly from new store openings.

The comparable store net sales calculation includes sales at the 98 Cent Clearance Center stores, acquired in December 1998, and sales at the Only \$One stores, acquired in June 1999. Both acquisitions were accounted for as poolings of interests. The shift in timing of the Easter holiday caused a portion of the Easter selling season to occur in the first quarter of 1999 which we believe adversely affected our comparable store net sales.

Most retailers can increase the price of their merchandise as well as sell more merchandise in order to increase their comparable store net sales. As a fixed price point retailer, we do not have the ability to raise our prices, so our comparable store net sales increase only when we sell more merchandise. We believe that our future comparable store net sales increases, if any, will be lower than those we have experienced in the past. Our internal business plan continues to call for a two to three percent increase in comparable store net sales for calendar year 1999.

Gross Profit. Gross profit increased \$19.2 million, or 25.9%. Our gross profit margin (gross profit expressed as a percentage of net sales) increased to 36.8% in the second quarter of 1999 from 36.1% in the same period in 1998. If you exclude merger related costs otherwise included in cost of sales (primarily related to merchandise markdowns), then the gross profit margin increased to 37.0%. This increase occurred mainly because certain costs declined as a percentage of net sales:

- Our inventory shrinkage decreased, mainly because of lower shrinkage in our distribution centers and improved inventory controls at our acquired stores. This decrease may not continue in future periods.
- Our distribution costs were lower because of efficiencies at our two newest distribution centers. The Chesapeake, VA facility, which has been in operation since early 1998, is more mature than a year ago, and the Olive Branch, MS facility, opened in early 1999, was able to service more stores than we forecast.

These decreased costs more than offset a slight increase in merchandise costs for the quarter. Our merchandise costs, which include freight costs, were higher this year compared to last because our merchandise mix included more domestic merchandise than during the second quarter of 1998. Domestic generally carry a higher cost than imported goods. We attribute the change in

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our mix year over year to the receipt of a higher quantity of imports than usual in 1998 as we sought to avoid last summer's shipping container shortage.

A recent increase in our transpacific shipping rates did not have a noticeable impact on our results for the quarter. Our management believes that the impact of these higher rates, which went into effect during the second quarter of 1999, can be substantially offset by other cost savings.

SGA Expenses. Selling, general and administrative (SGA) expenses, not including depreciation and amortization, increased \$12.9 million, or 26.0%. If you exclude merger related expenses, SGA expenses increased as a percentage of net sales to 24.4% in the second quarter of 1999 from 24.1% in the second quarter of 1998. This increase happened primarily because our comparable store net sales did not allow us to leverage our fixed costs. Depreciation and amortization increased \$2.0 million, to 2.7% a percentage of net sales in 1999 from 2.4% in 1998. This percentage increase is mainly the result of depreciation related to the new distribution facility in Olive Branch, Mississippi.

Increases in expenses can have a negative impact on our operating results, especially since we cannot pass on increased expenses to our customers by increasing our merchandise prices. Consequently, our future success will depend in large part on our ability to control costs.

Proposals now before the U.S. Congress call for increasing the federal minimum wage by \$1.00 an hour over two or three years. Our management believes that an increase in the minimum wage, if eventually passed into law, could have

a significant impact on our payroll costs.

Operating Income. Our operating income increased \$4.3 million or 21.9%. As a percentage of net sales, operating income decreased to 9.5% in the second quarter of 1999 from 9.6% in the same period in 1998. If you exclude merger related costs and expenses, operating income increased to \$25.1 million in 1999 from \$19.7 million in 1998 and increased as a percentage of net sales to 9.9% from 9.6%. These increases were attributable to the factors discussed above.

Interest Expense. Interest expense decreased to \$0.7 million in the second quarter of 1999 from \$1.1 million in the second quarter of 1998. This decrease was primarily a result of lower levels of debt in 1999 compared to 1998, resulting from a higher cash position throughout the three months ended June 30, 1999.

The Six Months Ended June 30, 1999 Compared To The Six Months Ended June 30, 1998

Net Sales. Net sales increased 24.5% to \$480.3 million for the six months ended June 30, 1999 from \$385.8 million for the six months ended June 30, 1998. We attribute this \$94.5 million increase to sales at new stores opened in 1999 and 1998 which are not included in our comparable store net sales calculation and a 3.5% increase in comparable same store sales in the first six months of 1999.

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We opened 115 new stores and closed three stores during the first half of 1999, compared to 102 new stores opened and five stores closed in the first half of 1998.

Gross Profit. Gross profit increased \$36.0 million, or 26.1%. Our gross profit margin increased to 36.3% in the first six months of 1999 from 35.8% in the same period in 1998. Merger related costs did not change the year-to-date gross margin percentage. The year-to-date increase in gross margin was impacted by the same factors as discussed above.

SGA Expenses. SGA, excluding depreciation and amortization, increased \$23.0 million, or 24.1%, in the first half of 1999. As a percentage of net sales, SGA expenses remained constant at 24.7%. If you exclude merger related expenses, SGA expenses decreased to 24.5% for the first half of 1999 from 24.7% during the same period in 1998. This decrease happened primarily because our year-to-date comparable store sales allowed us to leverage our fixed costs. Depreciation and amortization increased \$3.8 million, to 2.7% as a percentage of net sales in 1999 from 2.4% in 1998. This percentage increase is mainly the result of depreciation related to the new distribution facility in Olive Branch, Mississippi.

Operating Income. Our operating income increased \$9.3 million or 27.8%. As a percentage of net sales, operating income increased to 8.9% in the first half of 1999 from 8.6% in the same period in 1998. If you exclude merger related costs and expenses, operating income increased to \$43.6 million in 1999 from \$33.3 million in 1998 and increased as a percentage of net sales to 9.1% from 8.6%. These increases were attributable to the factors discussed above.

Interest Expense. Interest expense decreased to \$1.2 million in the first six months of 1999 from \$1.8 million in the first six months of 1998. This decrease was primarily a result of lower levels of debt in 1999 compared to 1998, resulting from a higher cash position throughout the six months ended June 30, 1999.

#### Liquidity and Capital Resources

Our business requires capital primarily to open new stores and operate existing stores. Our working capital requirements for existing stores are seasonal in nature and typically reach their peak in the months of September and October. Historically, we have met our seasonal working capital requirements for existing stores and funded our store expansion program from internally generated funds and borrowings under our credit facilities.

The following table compares certain cash-related information for the first two quarters of 1999 and 1998:

	Six Months Ended June 30,	
	1999	1998
	----	----
	(in millions)	
Net cash provided by (used in):		
Operations.....	\$ (19.9)	\$ (54.7)
Investing activities.....	(23.9)	(20.0)
Financing activities.....	5.7	36.0



For both periods, we generally expended net cash used in operations to build inventory levels, while net cash used in investing activities was used primarily to open new stores. The decrease in 1999 net cash used in operations reflects the lower amount of inventory compared to the same period in 1998, when imported goods were received earlier to avoid a possible shipping container shortage in Southeast Asia. Inventory quantities at comparable stores are similar year over year; the decrease is primarily seen in inventory quantities in the distribution centers.

Net cash provided by financing activities was obtained from:

- the exercise of stock options in both years,
- in 1998, borrowings under our bank facility used to fund our seasonal working capital needs, and
- in 1999, from the issuance of an additional \$2.5 million in callable bonds related to the construction of the Olive Branch distribution facility.

At June 30, 1999, our borrowings under our bank facility, senior notes and bonds were \$49.0 million and we had an additional \$135.0 million available through our bank facility. Of the amount available, approximately \$42.3 million was committed to letters of credit issued for the routine purchase of foreign merchandise.

During June 1999, we entered into an \$18.0 million operating lease agreement to finance the construction of a new distribution center in Stockton, California. This facility will replace the leased distribution center located in the Sacramento, California area. Unlike the Chesapeake and Olive Branch distribution centers, the new facility will not initially include an automated conveyor and sorting system. We expect to expand and automate this facility as we increase our selling capacity in the northern and central California and Nevada regions. The new facility is scheduled to be operational in the first quarter of 2000.

#### Year 2000 Compliance

We use a large number of computer software programs throughout our entire organization, such as purchasing, distribution, retail store management, financial business systems and various administrative functions. We developed some of these programs in-house and bought others from vendors.

We have been evaluating and adjusting all known date-sensitive systems and equipment for Year 2000 compliance. We define Year 2000 compliance to mean that a given system continues to function appropriately after December 31, 1999, with no significant business interruption. We divided our Year 2000 project into four phases:

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- inventory and initial assessment,
- remediation and testing,
- implementation and re-testing, and
- contingency planning.

The assessment and remediation and testing phases of the Year 2000 project are complete and include both information technology systems, such as computer equipment and software, as well as non-information technology equipment, such as warehouse conveyor systems. We will continue to monitor and test our systems to ensure ongoing compliance.

Our plan provided for internal compliance of mission-critical systems by mid-1999. While no one can offer a realistic guarantee that there won't be any business disruptions, we believe that the majority of our internal systems, including substantially all mission-critical systems, are currently Year 2000 compliant. Some programs and equipment were replaced beginning in late 1998 by routine upgrades which provided numerous system enhancements. These replacement programs and equipment are Year 2000 compliant. The upgrades were previously planned and were not accelerated due to Year 2000 issues. We have not deferred any information technology projects to address the Year 2000 issue.

We have relied primarily on internal resources to identify, correct or reprogram and test systems for Year 2000 compliance. To date, we have spent less than \$150,000 in modifying our systems for the Year 2000; the total costs of modifying our current systems are not expected to exceed \$275,000. These costs are not expected to have a material adverse effect on our financial condition and results of operations in future periods.

Additionally, we are continuing to communicate with service providers and domestic suppliers of merchandise to assess their Year 2000 readiness and the extent to which we may be vulnerable to any third parties' failure to correct their own Year 2000 issues. Many of these parties have stated that their ability to supply us will not be affected by the Year 2000 issue. However, we cannot be sure of their timely compliance and our operations could suffer due to the failure of a significant third part to become Year 2000 compliant.

We feel we are unable to adequately assess the potential effect of Year 2000 problems on our international suppliers, particularly in China. Several recent studies suggest that the preparedness of China and other Asian countries is considerably less than that of the United States and Europe, particularly in the fields of manufacturing and utilities. We cannot predict the duration or severity of any disruptions which may occur in China or the home countries of our other overseas suppliers. In addition, we have evaluated the preparedness of third parties who handle our international merchandise shipping for China. We believe these third parties are substantially Year 2000 compliant. A failure in our normal merchandise supply chain from China or other overseas suppliers could have a material adverse effect on our business.

Although we anticipate that minimal business disruption will occur as a result of Year 2000 issues, possible consequences include, but are not limited to, loss of communications links with store locations, customs delays, loss of

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electric power, and the inability to process transactions or engage in similar normal business activities. In addition, the United States and other world economies could witness unusual purchasing patterns or other disruptions if large numbers of consumers believe interruptions in power, communications, water or food supplies are likely, regardless of the actual risks. Any such disruptions could affect our business operations. With the substantial completion of the assessment, implementation and testing phases of our plan, we are now in the process of analyzing reasonably likely worst-case scenarios in order to establish appropriate contingency plans. We expect to establish any needed contingency plans by early in the fourth quarter of 1999.

The cost of the conversions and the completion dates are based on management's best estimates and may be updated as additional information becomes available. The above section, even if incorporated into other documents or disclosures, is a Year 2000 readiness disclosure as defined under the Year 2000 Information and Readiness Disclosure Act of 1998

#### New Accounting Pronouncements

In June 1998, the Financial Accounting Standards Board (FASB) issued its Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" (SFAS No. 133). SFAS No. 133 establishes standards for derivative instruments and hedging activities and requires that companies recognize all derivatives as either assets or liabilities in the statement of financial position and measure those instruments at fair value. SFAS No. 133 is effective for all fiscal quarters of fiscal years beginning after June 15, 1999. However, in June 1999, the FASB issued its Statement of Financial Accounting Standards No. 137, "Accounting for Derivative Instruments and Hedging Activities - Deferral of the Effective Date of SFAS No. 133, an Amendment of SFAS No. 133", which defers the effective date of SFAS No. 133 to all fiscal quarters of fiscal years beginning after June 15, 2000. Management is reviewing the impact of the implementation of this pronouncement on our financial condition and results of operations.

#### Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

During April 1999, as a result of the favorable interest rate environment, we entered into an interest rate swap agreement that converts a portion of our variable rate debt to a fixed rate and reduces our exposure to interest rate fluctuations. Under this agreement, we pay interest to the bank which provided the swap at a fixed rate of 5.5%. In addition, the bank pays us at a variable interest rate which is similar to the rate under the callable bonds and was 5.2% at June 30, 1999. The swap is for the entire amount outstanding under our callable bonds, which was \$19.0 million at June 30, 1999, and is effective through April 1, 2009. The bank which provided the swap has the option to cancel it on April 1, 2006.

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## PART II. OTHER INFORMATION

#### Item 1. LEGAL PROCEEDINGS.

We previously reported in our 1998 Annual Report on Form 10-K a dispute involving Michael and Pamela Alper and a corporation they control. No litigation

is currently pending against us in this matter.

We recalled approximately 155,000 retractable dog leashes which allegedly caused several personal injuries, as previously reported in our 1998 Annual Report on Form 10-K. There have been no other material developments regarding this matter in 1999.

Additionally, the company is a party to ordinary routine litigation and proceedings incidental to its business, including certain matters which may occasionally be asserted by the U.S. Consumer Product Safety Commission, none of which is individually or in the aggregate material to the company.

Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

At our Annual Meeting of Shareholders held on June 3, 1999, the following people were elected to the Board of Directors:

	Votes For -----	Votes Withheld -----
Macon F. Brock, Jr.	57,239,178	256,636
Richard G. Lesser	57,245,626	250,188

As Class I directors, Mr. Brock and Mr. Lesser will serve until the Annual Meeting of Shareholders in 2002, or such time as successors are elected and qualified.

J. Douglas Perry, John F. Megrue, H. Ray Compton, Thomas A. Saunders, III, Alan L. Wurtzel and Frank Doczi continue as directors after the meeting and no elections were held with respect to their offices. Allan W. Karp has retired his directorship.

At the same meeting, an amendment to the Articles of Incorporation was adopted, increasing our authorized common stock to 300,000,000 shares from 100,000,000 shares.

For	51,269,401
Against	6,199,543
Abstain	26,870

Item 5. OTHER INFORMATION.

Grant of Options to Directors

On June 2, 1999, options to purchase 13,500 shares of Common Stock each were granted to Frank Doczi and Alan Wurtzel as continuing directors, under the terms of the Stock Incentive Plan. Also on this date, an option to purchase 25,313 shares of Common Stock was granted to Richard Lesser as a new director, under the terms of the Stock Incentive Plan. These options are immediately exercisable and have an exercise price of \$34.3125 per share.

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Item 6. EXHIBITS AND REPORTS ON FORM 8-K.

(a) Exhibits.

The following documents are filed herewith:

- 3.1 Third Restated Articles of Incorporation of Dollar Tree Stores, Inc., as amended
- 10.1 Merger Agreement by and among Dollar Tree Stores, Inc., Dollar Tree New York, Inc., Tehan's Merchandising, Inc. and The Shareholders of Tehan's Merchandising, Inc., dated June 15, 1999
- 10.2 Credit Agreement among First Security Bank, National Association and First Union National Bank, dated June 2, 1999
- 10.3 Agency Agreement between Dollar Tree Distribution, Inc. and First Security Bank, National Association, dated June 2, 1999
- 10.4 Trust Agreement between First Union National Bank and First Security Bank, National Association, dated June 2, 1999
- 10.5 Security Agreement between First Security Bank, National Association and First Union National Bank and accepted and agreed to by Dollar Tree Distribution, Inc., dated June 2, 1999
- 10.6 Lease Agreement between First Security Bank, National Association and Dollar Tree Distribution, Inc., dated June 2, 1999
- 10.7 Participation Agreement among Dollar Tree Distribution, Inc., First Security Bank, National Association and First Union National Bank, dated June 2, 1999

(b) Reports on Form 8-K.

The following reports on Form 8-K were filed during the second quarter of 1999:

1. Report on Form 8-K, filed April 27, 1999, included a press release regarding earnings for the quarter ended March 31, 1999.
2. Report on Form 8-K, filed June 10, 1999, included a press release regarding the Annual Meeting of Shareholders held on June 3, 1999.

Also, in July 1999, we filed one Form 8-K.

Report on Form 8-K, filed July 22, 1999, included a press release regarding earnings for the quarter ended June 30, 1999. It also included quarterly financial data for the years 1998 and 1999 which has been restated on a combined basis to account for the pooling of interests between Dollar Tree Stores, Inc. and the operator of 24 Only \$One stores.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

DATE: August 10, 1999

DOLLAR TREE STORES, INC.

By: /s/ Frederick C. Coble

-----  
Frederick C. Coble  
Senior Vice President,  
Chief Financial Officer  
(principal financial and  
accounting officer)

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THIRD RESTATED ARTICLES OF INCORPORATION  
OF  
DOLLAR TREE STORES, INC.  
(as amended)

ARTICLE I  
NAME

The name of the Corporation is DOLLAR TREE STORES, INC.

ARTICLE II  
PURPOSES AND POWERS

The purpose for which the Corporation is organized is to engage in any lawful business not required by the Virginia Stock Corporation Act to be stated in the Articles of Incorporation.

The Corporation shall have all of the corporate powers of any character which are not prohibited by law or required to be stated in the Articles of Incorporation.

ARTICLE III  
CAPITAL STOCK

A. Authorized Shares. The aggregate number of shares that the Corporation shall have the authority to issue is Ten Million (10,000,000) shares of Preferred Stock, One Cent (\$.01) par value per share, and Three Hundred Million (300,000,000) shares of Common Stock, One Cent (\$.01) par value per share.

B. Preferred and Common Stock. The designations, preferences, voting powers and relative, participating, optional other special rights of the Preferred Stock and the Common Stock, and the qualifications, limitations and restrictions of such preferences and rights, shall be in accordance with Sections B(1) through B(6) of this Article III.

1. Issuance of Preferred Stock. The Preferred Stock may be issued from time to time, in one or more series, each of which series shall be designated by such appropriate designations as may be stated in such amendment or amendments to these Articles of Incorporation providing for the issuance of the stock of such series as may be adopted by the Board of Directors from time to time, a copy of which amendment or amendments shall have been filed with and made effective (without shareholder approval) by the State Corporation Commission of Virginia as required by law. Subject to the provisions hereof, all shares of any one series shall be alike in every particular and except for the relative rights and preferences as to which there may be variations between different series as set forth in this Article III, all shares of Preferred Stock shall be alike in every particular. The Board of Directors shall have power and authority, subject to all the provisions of these Articles and of the Virginia Stock Corporation Act, to state and determine, in the amendment or amendments providing for the issue of each series of Preferred Stock, the number of shares of each such series authorized to be issued and the preferences and relative, participating, optional and other rights pertaining to each such series, and the qualifications, limitations or restrictions thereof, including, full power and authority to determine, as to the Preferred Stock of each such series (a) the rate of dividend, the time of payment, whether dividends shall be cumulative and if so, the dates from which

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dividends shall be cumulative, and the extent of participation rights, if any, (b) any right to vote with holders of shares of any other series or class and any right to vote as a class, either generally or as a condition to specified corporate action, and the number of votes, if any, to be exercised for each share, (c) the price at and the terms and conditions on which shares may be redeemed, (d) the amount payable upon shares in event of involuntary liquidation, (e) the amount payable upon shares in event of voluntary liquidation, (f) sinking fund provisions for the redemption or purchase of shares, (g) the terms and conditions on which shares may be converted if the shares of any series are issued with the privilege of conversion, and (h) any other designations, rights, preferences or limitations that are now or hereafter permitted by law and are not inconsistent with the provisions of this Section B(1).

2. Dividends. The holders of the Preferred Stock shall be entitled to receive dividends as and when declared by the Board of Directors out of funds legally available therefor. Dividends on the Preferred Stock of each series shall be at such rates or to such extent, payable in such manner, under such conditions and on such dates as shall be stated in the amendment to the Articles of Incorporation providing for the issuance of each such series of Preferred Stock. The holders of Common Stock shall be entitled to receive such dividends as may from time to time be declared by the Board of Directors out of funds legally available therefor, subject to the rights of the series of Preferred Stock outstanding from time to time. Dividends on Preferred Stock shall be in preference to dividends on Common Stock, unless otherwise determined by the Board in the amendment or amendments providing for an issue of Preferred Stock.

3. Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, there shall be paid to the holders of shares of Preferred Stock of each series the fixed amount per

share payable in the event of liquidation, dissolution or winding up of the Corporation, stated in the amendment of the Articles of Incorporation providing for the issuance of each such series of Preferred Stock, plus the unpaid dividends accrued thereon, if such dividends be cumulative, before any sum shall be paid to, or any assets distributed among, the holders of the Common Stock, but the holders of the Preferred Stock shall be entitled to no further payment or distribution than as provided above. If amounts payable to holders of shares of Preferred Stock on liquidation, dissolution or winding up are not paid in full, the shares of Preferred Stock shall share in any distribution of assets (other than by way of dividends) on a basis determined by the Board in the amendment or amendments providing for the issue of each series of Preferred Stock, or, in the absence of such determination, the shares of Preferred Stock shall share ratably on a share for share basis in accordance with the sums which would be payable in such distribution if all sums payable were discharged in full. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Common Stock shall be entitled, in proportion to the number of shares of Common Stock so held, to payment or distribution of any assets remaining after all required payments to holders of Preferred Stock. A liquidation, dissolution or winding up of the Corporation, as such terms are used in this Section B(3), shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other corporation or corporations or a sale, lease or conveyance of all or part of

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its assets.

4. Redemption. The Preferred Stock of each series shall be subject to redemption if so provided, and at the prices, and upon the terms and conditions stated, in the amendment to the Articles of Incorporation providing for the issuance of each such series of Preferred Stock.

5. Voting. The holders of each series of the Preferred Stock shall have no voting power except as may be required by law, or as may be provided, and upon the terms and conditions stated, in the amendment to the Articles of Incorporation providing for the issuance of each such series of Preferred Stock. Except as set forth hereinabove, the entire and exclusive voting rights are vested in the holders of the Common Stock. Each holder of the Common Stock shall have one vote for each share held by him, and each holder of any series of Preferred Stock when and if entitled to vote shall also have such votes for each share held by him as provided in the amendment to the Articles of Incorporation providing for the issuance of each such series of Preferred Stock.

6. Pre-emptive Rights. No holder of any share of capital stock of the Corporation, whether now or hereafter authorized or outstanding, shall have any pre-emptive or preferential right to purchase or subscribe to purchase i) any shares of stock of any class of the Corporation or other security that the Corporation may determine to issue, whether share of stock or other security to be issued is now or hereafter authorized, ii) any warrants, rights or options to purchase any stock or other security, or iii) any obligation convertible into any such stock or other security or into warrants, rights or options to purchase any such stock or other security.

#### ARTICLE IV DIRECTORS

The number of directors shall be fixed by the By-Laws. In the absence of such a provision in the By-Laws, the number of directors shall be nine. Upon the effective date of these Third Restated Articles of Incorporation, the Board of Directors shall divide the directors of the corporation into three classes as nearly equal in number as possible. The term of office of the first class of directors shall expire at the first annual meeting of stockholders after the initial election dividing directors into such classes, that of the second class shall expire at the second annual meeting after such election, and that of the third class at the third annual meeting after such election. At each annual meeting of stockholders, successors to the class of directors whose terms shall then expire and any other nominees for election as a director of such class shall be elected to hold office until the third succeeding annual meeting. If the number of directors is changed, any newly created directorships or decrease in directorships shall be so apportioned among the classes by the Board of Directors as to make all classes as nearly equal in number as possible. Vacancies resulting from an increase in the number of directors may be created and filled by action of the Board of Directors between annual meetings of stockholders. A director may be removed only if the number of votes cast to remove the director constitutes more than two-thirds (2/3) of the votes entitled to be cast at an election of directors.

#### ARTICLE V INDEMNIFICATION

A. Definitions. For purposes of this Article, the following definitions

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shall apply:

"Act" means the Virginia Stock Corporation Act, as it exists on the date hereof or is hereafter amended, or any successor or comparable provision of law if such Act is repealed.

"eligible person" means a person who is or was a director or officer of the Corporation, or while serving as such director or officer, is or was serving at the request of the Corporation as a director, trustee, partner or officer of another corporation, affiliated corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. A person shall be considered to be serving an employee benefit plan at the Corporation's request if his duties to the Corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan.

"expenses" includes, without limitation, counsel fees, expert witness fees, and costs of investigation, litigation and appeal, as well as any amounts expended in asserting a claim for indemnification.

"liability" means the obligation to pay a judgment, settlement, penalty, fine (including any excise tax assessed with respect to any employment benefit plan), or reasonable expenses incurred with respect to a proceeding.

"party" includes, without limitation, an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"proceeding" means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

#### B. Indemnification of Officers and Directors.

1. To the full extent that the Act permits the limitation or elimination of the liability of directors and officers, no director or officer of the Corporation made a party to any proceeding shall be liable to the Corporation or its stockholders for monetary damages arising out of any transaction, occurrence or course of conduct, whether occurring prior or subsequent to the effective date of this Article V.

2. To the full extent permitted by the Act, the Corporation shall indemnify any eligible person who was or is a party to any proceeding, including a proceeding brought by or in the right of the Corporation or brought by or on behalf of the stockholders of the Corporation, against any liability incurred by him in connection with such proceeding unless he engaged in willful misconduct or a knowing violation of the criminal law. To the same extent, the Board of Directors is hereby empowered, by a majority vote of a quorum of disinterested directors, to enter into a contract to indemnify any director or officer against liability and/or to advance or reimburse his expenses in respect to any proceedings arising from any act or omission, whether occurring before or after the execution of such contract.

3. The provisions of this Article V shall be applicable to all proceedings commenced after it becomes effective, arising from any act or omission, whether occurring before or after such effective date. No amendment or repeal of this Article V shall impair or otherwise diminish the rights

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provided under this Article V (including those created by contract) with respect to any act or omission occurring prior to such amendment or repeal. The Corporation shall promptly take all such actions and make all such determinations and authorizations as shall be necessary or appropriate to comply with its obligation to make any indemnity against liability, or to advance any expenses, under this Article V and shall promptly pay or reimburse all reasonable expenses, including attorneys' fees, incurred by any such director or officer in connection with such actions and determinations or proceedings of any kind arising therefrom.

4. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the director or officer did not meet any standard of conduct that is a prerequisite to the limitation or elimination of liability provided in Section B(1) of this Article V or to his entitlement to indemnification under Section B(2) of this Article V.

5. No indemnification under Section B(2) of this Article V (unless ordered by a court of law) shall be made by the Corporation without a determination in the specific case that indemnification is proper in the circumstances because the proposed indemnitee has met the standard of conduct that is a prerequisite to his entitlement to indemnification under Section B(2) of this Article V.

The determination shall be made:

- (a) By the Board of Directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding;
- (b) If a quorum cannot be obtained under subsection (a) of this Section B(5), by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;
- (c) By special legal counsel:
  - i) selected by the Board of Directors in the manner prescribed in

subsection (a) of this Section B(5) or its committee in the manner prescribed in subsection (b) of this Section B(5); or

- ii) if a quorum of the Board of Directors cannot be obtained under subsection (a) of this Section B(5) and a committee cannot be designated under subsection (b) of this Section B(5), selected by a majority vote of the full Board of Directors including directors who are parties; or

(d) By the stockholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is appropriate, except that if the determination is made by special legal counsel, such authorizations and evaluations shall be made by those entitled under subsection (c) of this Section B(5) to select counsel.

Notwithstanding the foregoing, in the event there has been a change in the composition of a majority of the Board of Directors after the date of the alleged act or omission with respect to which indemnification, an advance or reimbursement is claimed, any determination as to such indemnification,

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advance or reimbursement shall be made by special legal counsel agreed upon by the Board of Directors and the proposed indemnitee. If the Board of Directors and the proposed indemnitee are unable to agree upon such special legal counsel, the Board of Directors and the proposed indemnitee each shall select a nominee, and the nominees shall select such special legal counsel.

6. (a) The Corporation shall pay for or reimburse the reasonable expenses incurred by a director or officer (and may do so for a person referred to in Section B(7) of this Article V) who is a party to a proceeding in advance of final disposition of the proceeding or the making of any determination under Section B(2) of this Article V if the director, officer or person furnishes to the Corporation:

- i) a written statement, executed personally, of his good faith belief that he has met the standard of conduct that is a prerequisite to his entitlement to indemnification under Section B(2) of this Article V; and

- ii) a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet such standard of conduct.

(b) The undertaking required by paragraph (ii) of subsection (a) of this Section B(6) shall be an unlimited general obligation but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Authorizations of payments under this Section B(6) shall be made by the persons specified in Section B(5) of this Article V.

7. The Board of Directors is hereby empowered, by majority vote of a quorum consisting of disinterested directors, to cause the Corporation to indemnify or contract to indemnify any person not specified in Section B(2) of this Article V who was, is or may become a party to any proceeding, by reason of the fact that he is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, to the same or a lesser extent as if such person were specified as one to whom indemnification is granted in Section B(2) of this Article V. The provisions of Sections B(3) through B(6) of this Article V shall be applicable to any indemnification provided pursuant to this Section B(7).

8. The Corporation may purchase and maintain insurance to indemnify it against the whole or any portion of the liability assumed by it in accordance with this Article V and may also procure insurance, in such amounts as the Board of Directors may determine, on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against or incurred by him in any such capacity or arising from his status as such, whether or not the Corporation would have power to indemnify him against such liability under the provisions of this Article V.

9. Every reference herein to directors, officers, employees or agents shall include former directors, officers, employees and agents and their respective heirs, executors and administrators. The indemnification hereby provided and provided hereafter pursuant to the power hereby conferred by this

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Article V on the Board of Directors shall not be exclusive of any other rights to which any person may be entitled, including any right under policies of



insurance that may be purchased and maintained by the Corporation or others, with respect to claims, issues or matters in relation to which the Corporation would not have the power to indemnify such person under the provisions of this Article V. Nothing herein shall prevent or restrict the power of the Corporation to make or provide for any further indemnity, or provisions for determining entitlement to indemnity, or provisions for indemnification agreements, By-Laws, or other arrangements (including, without limitation, creation of trust funds or security interests funded by letters of credit or other means) approved by the Board of Directors (whether or not any of the directors of the Corporation shall be a party to or beneficiary of any such agreements, By-Laws or arrangements); provided, however, that any provision of such agreements, By-Laws or other arrangements shall not be effective if and to the extent that it is determined to be contrary to this Article V or applicable laws of the Commonwealth of Virginia, but other provisions of any such agreements, By-Laws or other arrangements shall not be affected by any such determination.

10. Each provision of this Article V shall be severable, and an adverse determination as to any such provision shall in no way affect the validity of any other provision.

ARTICLE VI  
AMENDMENTS

Adoption of an amendment to Article IV or this Article VI of these Third Restated Articles of Incorporation, or Articles II(3), II(5), III(2), III(3), or III(4) of the Second Restated By-Laws requires, of each voting group entitled to vote thereon, approval of the amendment by more than two-thirds of all the votes entitled to be cast by that voting group. Adoption of all other amendments to the Articles of Incorporation requires, of each voting group entitled to vote thereon, approval of the amendment by a majority of a quorum of the voting group. Nothing in this Article VI shall be construed to require shareholder approval of an amendment or amendments to these Articles of Incorporation providing for the issuance of any series of Preferred Stock in accordance with Article III(B) of these Articles of Incorporation.

ARTICLE VII  
MISCELLANEOUS

A. The Corporation elects not to be governed by Article 14 of the Act, entitled "Affiliated Transactions."

B. The Corporation elects not to be governed by Article 14.1 of the Act, entitled "Control Share Acquisitions," and such Article shall not apply to acquisitions of shares of the Corporation.

MERGER AGREEMENT

by and among

DOLLAR TREE STORES, INC.,

DOLLAR TREE NEW YORK, INC.,

TEHAN'S MERCHANDISING, INC. AND

THE SHAREHOLDERS OF

TEHAN'S MERCHANDISING, INC.

As of June 15, 1999

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The following is a list of the defined terms used in this Agreement:

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1998 Financial Statements.....	Section 4.7(a)
Affiliate.....	Section 4.5(a)
Agreement.....	Recitals and Section 12.7
Alternative Transaction.....	Section 6.6(a)(i)
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EXHIBITS

Exhibit A	Registration Rights Agreement
Exhibit B	Escrow Agreement
Exhibit C	Opinion of Counsel for the Company and the Shareholders
Exhibit D	Non-Competition Agreement
Exhibit E	Opinion of Counsel for Parent and Sub
Exhibit F	One Year Employment Agreement Between Company and Louis B. Tehan

MERGER AGREEMENT

THIS MERGER AGREEMENT, dated as of June 15, 1999 (the "Agreement"), by and among DOLLAR TREE STORES, INC., a Virginia corporation ("Parent"), DOLLAR TREE NEW YORK, INC., a New York corporation and a wholly owned subsidiary of Parent ("Sub"), TEHAN'S MERCHANDISING, INC., a New York corporation (the "Company"), and RICHARD J. TEHAN, STEVEN A. TEHAN, BASIL L. TEHAN, ROBERT J. TEHAN, and FREDERICK J. TEHAN, the sole shareholders of the Company (each may be referred to herein as a "Shareholder" or collectively as the "Shareholders").

W I T N E S S E T H:

WHEREAS, the respective Boards of Directors of Parent, Sub and the Company have each determined that it is in the best interests of their respective shareholders that, upon the terms and subject to the conditions of this Agreement and in accordance with the New York Business Corporation Law ("New York Law"), Sub and the Company will enter into a business combination transaction pursuant to which Sub will merge with and into the Company (the "Merger");

WHEREAS, Parent and Sub require the Merger to be accounted for as a pooling of interests and to qualify as a "reorganization" within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the parties have determined that the Merger and the other transactions contemplated hereby are consistent with, and in furtherance of, their respective business strategies and goals;

WHEREAS, the Board of Directors of Sub and Parent has approved this Agreement, the Merger, and the transactions contemplated hereby in accordance with applicable law and the Articles or Certificate of Incorporation and By-laws of Parent and Sub;

WHEREAS, the Board of Directors of the Company has (i) approved this Agreement, the Merger, and the transactions contemplated hereby in accordance with the requirements of New York Law and the Certificate of Incorporation and the By-laws of the Company; (ii) found this Agreement, the Merger, and the transactions contemplated hereby to be fair to the Shareholders; and (iii) directed this Agreement and the Merger to be submitted to, and recommended approval by, the Shareholders;

WHEREAS, the Company and the Shareholders, on the one hand, and Parent and Sub, on the other hand, desire to make certain representations, warranties, covenants and other agreements in connection with the Merger; and

WHEREAS, a portion of the shares of common stock of Parent otherwise issuable by Parent in connection with the Merger shall be placed in escrow by Parent for purposes of

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satisfying damages, losses, expenses and other similar charges which result from breaches of the representations, warranties and covenants of the Company and the Shareholders contained herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE 1  
THE MERGER

1.1 Surviving Corporation. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with New York Law, at the Effective Time (as defined in Section 1.4), Sub shall be merged with and into the Company. The separate corporate existence of Sub shall cease and the Company shall continue as the surviving corporation of the Merger (sometimes referred to herein as the "Surviving Corporation") as a wholly-owned subsidiary of Parent under the name of the Sub and shall continue its corporate existence under the laws of the State of New York.

1.2 Certificate of Incorporation; Bylaws. At the Effective Time, the Certificate of Incorporation of the Surviving Corporation shall amended to take the same form as the Certificate of Incorporation of the Sub until thereafter amended as provided by law. The Bylaws of Sub, as in effect immediately prior to the Effective Time, shall become the Bylaws of the Surviving Corporation until thereafter amended.

1.3 Directors and Officers. The directors of Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation immediately after the Effective Time, each to hold the office of director of the Surviving Corporation in accordance with the provisions of the applicable laws of the State of New York and the Certificate of Incorporation and Bylaws of the Surviving Corporation until their successors are duly qualified and elected. The officers of Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation immediately after the Effective Time, each to hold office in accordance with the provisions of the Bylaws of the Surviving Corporation.

1.4 Effective Time. As promptly as practicable after the satisfaction or waiver of the conditions set forth in Articles 8 and 9, the parties hereto shall cause the Merger to be consummated by filing a certificate of merger (the "Certificate of Merger"), together with any required related certificates, with the Secretary of State of the State of New York, in such form as required by, and executed in accordance with the relevant provisions of, New York Law and in such form as approved by the Company and Parent prior to such filing. The Merger shall become effective on the later of (i) the time of filing by the Department of State of the State of New York in accordance with New York Law of the original, properly executed Certificate of Merger, or (ii) 11:59 p.m. on June 30, 1999, which is the time specified to be the effective time in the Certificate of Merger. The time at which the Merger shall become effective is referred to herein as the

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"Effective Time." The Certificate of Merger shall be submitted for filing at the time of the Closing and a draft thereof may be submitted prior thereto for clearance.

1.5 Other Effects of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of New York Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the rights, privileges, immunities, powers and purposes and all the property, real and personal, including subscriptions to shares, causes of action and every other asset of the Company and Sub shall vest in the Surviving Corporation without further act or deed, and all liabilities, obligations and penalties of the Company and Sub shall become the liabilities, obligations and penalties of the Surviving Corporation.

1.6 Tax-Free Reorganization. The Merger is intended to constitute a reorganization within the meaning of Section 368(a) of the Code, and this Agreement is intended to constitute a plan of reorganization within the meaning of the regulations promulgated under Section 368(a) of the Code.

1.7 Registration of Shares. Parent and Shareholders shall execute and deliver at Closing a Registration Rights Agreement in the form attached hereto as Exhibit A (the "Registration Rights Agreement") regarding the filing of a registration statement covering the resale by the Shareholders of the shares of voting common stock, par value \$.01 per share, of Parent (the "Parent Common Stock") to be issued in the Merger and other matters all as set forth in such Registration Rights Agreement.

## ARTICLE 2 PURCHASE PRICE; CONVERSION OF SHARES

2.1 Conversion or Cancellation of Shares; Escrow. Subject to the provisions of this Article 2, at the Effective Time, by virtue of the Merger and without any further action by the Shareholders, the shares of capital stock of the Company outstanding immediately prior to the Effective Time (the "Company Shares") shall be canceled and extinguished and automatically converted into shares of Parent Common Stock, as follows:

(a) Exchange Ratio. Each Company Share issued and outstanding immediately prior to the Effective Time shall be converted, subject to Sections 2.1(c) and 2.2, into that number of shares of Parent Common Stock as is determined by multiplying such Company Share by a ratio equal to (i) Merger Consideration divided by (ii) Fully Diluted Company Shares (such ratio shall be referred to herein as the "Exchange Ratio"). The "Merger Consideration" shall be a number of shares of Parent Common Stock equal to \$20,000,000 divided by the arithmetic average of the closing price per share of Parent Common Stock, as reported on the Nasdaq National Market System (the "Nasdaq"), for each of the four (4) consecutive trading days ending with the trading day which occurs immediately prior to the Closing Date (the "Average Closing Price"). "Fully Diluted Company Shares" means the total number of shares of Company common stock issued and outstanding immediately prior to the Effective Time plus any such shares which may be

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or become issuable by the Company pursuant to options, warrants, convertible securities or other stock rights as of the Effective Time.

(b) Escrows of Shares. An aggregate of five percent (5%) of the shares of Parent Common Stock issuable with respect to Company Shares in the Merger (together with any dividends or distributions accrued or made with respect to such shares of Parent Common Stock after the Effective Time and any other securities or property which may be issued after the Effective Time in exchange for such shares of Parent Common Stock in any merger or recapitalization or similar transaction involving Parent, the "Escrow Shares") shall be transferred and pledged when and as issued on a pro rata basis to the Escrow Agent (as defined in the "Escrow Agreement" attached as Exhibit B) to secure the payment of any Deficit Amount pursuant to Section 2.4 hereof and the indemnification obligations of the Shareholders pursuant to this Agreement and the Escrow Agreement.

(c) Stock Splits, etc. If after the date of the signing of this Agreement but prior to the Effective Time, Parent should split or combine the Parent Common Stock, or pay a stock dividend or other stock distribution in Parent Common Stock, or otherwise change the Parent Common Stock into any other securities, or make any other dividend or distribution on the Parent Common Stock, then the Exchange Ratio and the number of shares of Parent Common Stock constituting the aggregate consideration issuable in the Merger in



respect of Company Shares shall be appropriately adjusted to reflect such change.

(d) Stock of Sub. Each share of common stock, par value \$.01 per share, of Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one (1) duly and validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

2.2 Fractional Shares. No scrip or fractional shares of Parent Common Stock shall be issued in the Merger. For purposes of determining the number of shares of Parent Common Stock to be issued to each Shareholder in the Merger, all the Company Shares owned by such Shareholder shall be aggregated prior to applying the Exchange Ratio. If, after such aggregation, any Shareholder is to receive a fractional share, such Shareholder shall be entitled, after the later of (a) the Effective Time or (b) the surrender of such Shareholder's Certificate(s) (as defined below) that represent such Company Shares, to receive from Parent an amount in cash in lieu of such fractional share, based on the Average Closing Price.

### 2.3 Procedures Relating to Company Shares.

(a) Exchange of Certificates. On or prior to the Closing Date, each Shareholder shall surrender all outstanding certificates which immediately prior to the Effective Time represented Company Shares (the "Certificate" or "Certificates") for payment therefor and conversion thereof. Delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to Parent. Upon surrender to Parent of a Certificate, the

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holder of such Certificate shall be entitled to receive in exchange therefor (i) one or more certificates as requested by the holder (properly issued, executed and countersigned, as appropriate) representing that number of whole shares of fully paid and nonassessable shares of Parent Common Stock to which such holder of Company Shares shall have become entitled pursuant to the provisions of Section 2.1 hereof; (ii) as to any fractional share of Parent Common Stock, a check representing the cash consideration to which such holder shall have become entitled pursuant to Section 2.2 hereof; and (iii) any dividend or other distribution to which such holder is entitled pursuant to Section 2.3(b) hereof, and the Certificate so surrendered shall forthwith be canceled. No interest will be paid or accrued on the cash payable upon the surrender of the Certificates. If any portion of the consideration to be received pursuant to Sections 2.1, 2.2 and 2.3(b) upon exchange of a Certificate (whether a certificate representing shares of Parent Common Stock or by check representing cash for a fractional share) is to be issued or paid to a person other than the person in whose name the Certificate surrendered in exchange therefor is registered, it shall be a condition of such issuance and payment that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such exchange shall pay in advance any transfer or other taxes required by reason of the issuance of a Certificate or a check representing cash for a fractional share to such other person, or established to the satisfaction of Parent that such tax has been paid or that such tax is not applicable. From the Effective Time until surrender in accordance with the provisions of this Section 2.3, each Certificate shall represent for all purposes only the right to receive the consideration provided in Sections 2.1, 2.2 and 2.3(b). All payments of respective shares of Parent Common Stock that are made upon surrender of Certificates in accordance with the terms hereof shall be deemed to have been made in full satisfaction of rights pertaining to the Company Shares evidenced by such Certificates.

(b) Cash Payments. No dividends or other distributions with respect to Parent Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Parent Common Stock, and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 2.2, in each case until the surrender of such Certificate in accordance with this Article 2. Following surrender of any such Certificate, there shall be paid to the holder of the certificate representing whole shares of Parent Common Stock issued in exchange therefor, without interest, (i) at the time of such surrender, the amount of any cash payable in lieu of a fractional share of Parent Common Stock to which such holder is entitled pursuant to Section 2.2 and the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Parent Common Stock; and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and with a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

(c) Lost, Mislaid, Stolen or Destroyed Certificates.

In the case of any lost, mislaid, stolen or destroyed Certificate, the holder thereof may be required, as a condition precedent to delivery to such holder of the consideration described in Sections 2.1, 2.2 and 2.3(b) hereof, to deliver to Parent a bond in such reasonable sum or a reasonably satisfactory indemnity agreement

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as Parent may direct as indemnity against any claim that may be made against Parent or the Surviving Corporation with respect to the Certificate alleged to have been lost, mislaid, stolen or destroyed.

(d) No Stock Transfers. After the Effective Time, there shall be no transfers on the stock transfer books of the Surviving Corporation of the Company Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for transfer, they shall be canceled and exchanged for the consideration described in Sections 2.1, 2.2 and 2.3(b) hereof.

(e) Unclaimed Merger Consideration. Any shares of Parent Common Stock or cash due former shareholders of the Company pursuant to Sections 2.1, 2.2 and 2.3(b) hereof that remain unclaimed by such former shareholders for six (6) months after the Effective Time shall be held by Parent, and any former holder of Company Shares who has not theretofore complied with Section 2.3(a) shall thereafter look only to Parent for issuance of the number of shares of Parent Common Stock and other consideration to which such holder has become entitled pursuant to the provisions of Sections 2.1, 2.2 and 2.3(b) hereof; provided, however, that neither Parent nor any party hereto shall be liable to a former holder of Company Shares for any amount required to be paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

(f) Dissenting Shares.

(i) To the extent that the availability of appraisal rights are mandated under New York Law, Company Shares that have not been voted for adoption of the Merger and with respect to which appraisal rights have been properly demanded in accordance with New York Law (the "Dissenting Shares") shall not be converted pursuant to this Article 2 or transferred to the Escrow Agent at or after the Effective Time unless and until the holder of such shares becomes ineligible for such appraisal rights. If a holder of Dissenting Shares becomes ineligible for appraisal, then, as of the Effective Time or the occurrence of such event, whichever later occurs, such holder's Dissenting Shares shall cease to be Dissenting Shares and shall be converted pursuant to this Article 2 (subject to all of the rights and obligations of the Shareholders hereunder). The Company shall immediately give Parent notice of such assertion and Parent shall have the right to participate in all negotiations and proceedings with respect to any such demands. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to, or settle or offer to settle, any such demand for payment. Holders of Dissenting Shares shall have those rights, but only those rights, of holders of "dissenting shares" under Sections 623 and 910 et seq. of the New York Law, and payment for Dissenting Shares shall only be made as required by New York Law.

(ii) Each Shareholder hereby irrevocably disclaims and relinquishes, for himself, his personal representative, successors, heirs and assigns any and all rights to demand or be paid for the fair value of such Company Shares as described above.

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2.4 Post-Closing Adjustment. If the Closing Equity as determined in accordance with Section 6.18 is less than \$3,500,000 (the "Target Amount"), then the excess of the Target Amount over the Closing Equity (as defined in Section 6.18) shall be referred to as the "Deficit Amount" and, within five (5) business days of the date on which the final Statement of Closing Equity (as defined in Section 6.18) is determined (or on such earlier date as may be set forth in the Escrow Agreement), the Escrow Agent shall surrender to Parent, out of the Escrow Shares, a number of shares of Parent Common Stock for cancellation without consideration determined by dividing (i) the Deficit Amount by (ii) the Average Closing Price; provided, however, that the Shareholders shall be responsible for paying the Deficit Amount in accordance with Article 7, if such Escrow Shares are insufficient to pay the Deficit Amount.

## CLOSING

3.1 The Closing. The closing ("Closing") will take place at 10:00 a.m. New York time on a date to be specified by the parties, at a mutually agreed location, no later than the second business day after fulfillment of all the conditions set forth in Article 8 which have not been waived by Parent, and all the conditions set forth in Article 9 which have not been waived by the Company. The parties will use all commercially reasonable efforts to close on June 25, 1999, but shall have no obligation to waive any conditions to closing that have not been fulfilled by June 25, 1999. The date on which the Closing is held is referred to as the "Closing Date." In the event the Closing is held before the Effective Time, all deliveries at Closing shall be held in escrow by counsel to the parties until the Effective Time, at which time the deliveries shall be released.

## ARTICLE 4 SHAREHOLDER REPRESENTATIONS AND WARRANTIES

Each Shareholder severally and jointly represents and warrants to Parent and Sub, that subject only to the exceptions specifically stated in this Article and contained in the disclosure schedule delivered by the Company to Parent concurrently and identified as the "Disclosure Schedule," the following representations, warranties and schedules are true, accurate, and complete as of the date of this Agreement and as of the Closing Date:

### 4.1 Corporate Organization; Authorization.

(a) The Company has the requisite power and authority to execute and deliver this Agreement and all agreements, documents and instruments executed and delivered by the Company in connection with the transactions contemplated by this Agreement (the "Company Ancillary Agreements") and to fully perform its respective obligations hereunder and thereunder, and the execution and delivery of this Agreement and the Company Ancillary Agreements by the Company and the Company's performance of the transactions contemplated herein and therein have been duly authorized by all requisite corporate and shareholder action. Pursuant to that certain unanimous consent in writing dated June 15, 1999, a certified copy of which is attached as Schedule

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4.1(a) hereto, the Board of Directors and Shareholders of Company have, as of the date of this Agreement, determined unanimously that this Agreement and the Merger is fair to, and in the best interests of the Company and its shareholders, recommended that the shareholders of the Company approve this Agreement and irrevocably approved the Agreement and the Merger subject only to conditions precedent set forth in Article 8. Pursuant to such consent, (i) the Company has, in accordance with New York Law and other applicable law and its Certificate of Incorporation and Bylaws, convened a meeting of its shareholders (the "Company Shareholders Meeting") to consider and vote upon the Merger; (ii) the Board of Directors of the Company has recommended and declared advisable approval of this Agreement, the Certificate of Merger, the Merger and the other transactions contemplated hereby; and (iii) the shareholders of the Company have voted the requisite number of Company Shares for, or otherwise granted their approval of, the Merger, this Agreement, and the Certificate of Merger.

(b) Each of the Shareholders has the requisite power and capacity to execute and deliver this Agreement and all agreements, documents and instruments executed and delivered by such Shareholder in connection with the transactions contemplated by this Agreement (the "Shareholder Ancillary Agreements" and, together with the Shareholder Ancillary Agreements, the "Ancillary Agreements") and to fully perform his respective obligations hereunder and thereunder, and the execution and delivery of this Agreement.

(c) The Company is a corporation validly existing and in good standing under the laws of the State of New York and has all requisite corporate power and authority to own, operate and lease its property and to carry on its business as now being conducted. The ownership or leasing of the Company's properties and the conduct of its business do not require that the Company be qualified to conduct business as a foreign corporation in any jurisdiction.

(d) The Company has previously delivered to Parent a true, correct, and complete copy of its Certificate of Incorporation, By-laws and all amendments to the foregoing. The minute books of Company made available to counsel for Parent are the only minute books of Company and contain a reasonably accurate summary, in all material respects, of all meetings of directors (or committees thereof) and the shareholders or actions by written consent since the time of incorporation of Company.

### 4.2 No Violation.

(a) Neither the execution and delivery of this Agreement or any of the Ancillary Agreements by the Company or the Shareholders nor the consummation of the transactions contemplated hereby or thereby by the Company or the Shareholders shall (i) violate or result in a breach of or constitute a default under any provision of the Company's certificate of incorporation or bylaws; (ii) violate any order, arbitration award, judgment, decree, law, ordinance, regulation or any other restriction of any kind or character to which the Company or any Shareholder is a party or is bound or to which any property of the Company or any Shareholder is subject or is bound; (iii) except as described in Section 4.2 (b) of the Disclosure Schedule, violate or result in a breach

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of or constitute a default (or would result in or constitute such a breach or default with notice or lapse of time or both) under any provision of any Company Contract (as defined below); (iv) except as described in Section 4.2 (b) of the Disclosure Schedule, require the consent of any other party to any of the items described in this subsection; or (v) except as described in the last sentence of Section 5.3, require the consent or approval of any governmental body, agency or authority.

(b) Attached as Section 4.2 (b) of the Disclosure Schedule is a description of (i) all amounts that may become payable; (ii) all Company Contracts that may be in default or be breached, assuming no consents or waivers are obtained; and (iii) any expense or loss that may be realized under GAAP, as a result of or in connection with the Merger or the transactions contemplated by this Agreement.

4.3 Enforceability. The Company and the Shareholders have duly executed and delivered this Agreement and each of the Ancillary Agreements, and this Agreement and each of the Ancillary Agreements constitutes a valid and binding agreement, enforceable against the Company and the Shareholders in accordance with its terms, except as enforceability may be limited by laws of general application relating to bankruptcy, insolvency and debtors' relief, and by general principles of equity.

#### 4.4 Capitalization.

(a) The authorized capital stock of the Company and the issued and outstanding shares of capital stock are set forth in Section 4.4(a) of the Disclosure Schedule. Section 4.4(a) of the Disclosure Schedule also sets forth a true and complete list of all of the shareholders of the Company as of the date of this Agreement, the number of shares of capital stock owned by each of them, the date such shares were transferred to the shareholders, and each shareholder's social security number and address. All of the Company's issued and outstanding shares of capital stock have been duly authorized and validly issued, are fully paid and nonassessable, are not subject to preemptive rights, and have been issued in compliance with all applicable federal and state securities laws.

(b) Except for the Shareholders, no person owns or has a beneficial or legal interest in any portion of the Company's capital stock. Except as set forth in Section 4.4(b) of the Disclosure Schedule, there are no warrants, options, agreements, calls, rights (including preemptive rights), convertible or exchangeable securities or other commitments pursuant to which the Company is or may become obligated to grant, issue, extend, accelerate vesting, sell, purchase, retire or redeem any shares of capital stock or other securities. There is no right of first refusal, co-sale right, right of participation, right of first offer demand, registration rights, restriction on transfer (other than pursuant to applicable securities laws), or other agreement or understanding applicable to the Company's capital stock or securities. Neither the Company nor any Shareholder is a party or subject to any agreement or understanding, and, to the Company's knowledge, there is no agreement or understanding between or among any other persons, that affects or relates to the voting

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or giving of written consent with respect to any outstanding security of the Company, other than as contemplated hereby.

(c) The Company Shares set forth as owned by each Shareholder on Section 4.4(a) of the Disclosure Schedule are in fact owned individually only by such Shareholder and are free and clear of all liens, encumbrances, security interests, mortgages, pledges, charges, agreements, rights, options, warrants, restrictions and claims.

#### 4.5 Subsidiaries; Affiliates; Conflict of Interest.

(a) The Company has no subsidiaries. The business of the Company is conducted by the Company and is not directly or indirectly conducted through a subsidiary or Affiliate (as defined below) of Company, or by any other entity. The term "Affiliate" with respect to any person means any person or entity which controls such person, which that person controls, or which is under common control with that person. In the case of the Company, the term "Affiliate" shall include, but not be limited to, the Shareholders and the Shareholders' Affiliates. Affiliates of Shareholders include the spouse of a Shareholder, siblings and lineal descendants or ancestors of Shareholders, and any corporation, partnership, joint venture or other entity which any of the Shareholders, any spouse, sibling or lineal descendant or ancestor of a Shareholder, or a trust for the benefit of any of them, controls. For purposes of the preceding sentences, the term "control" means the power, direct or indirect, to direct or cause the direction of the management and policies of a person or entity through voting securities, contract or otherwise. Except as set forth in Section 4.5(a) of the Disclosure Schedule, no Affiliate of the Company has any direct or indirect interest (other than an investment interest in no more than five percent (5%) of the stock of a publicly traded company) in any creditor, competitor, supplier, customer, or lessor of Shareholders.

(b) Except as set forth in Section 4.5(b) of the Disclosure Schedule, no Affiliate of the Company is presently a party to any agreement or arrangement with the Company: (i) providing for the furnishing of raw materials, products or services to or by, or (ii) providing for the sale or rental of real or personal property to or from, any such entity.

(c) Except as set forth in Section 4.5(c) of the Disclosure Schedule, no Affiliate of the Company has any interest in: (i) any contract, arrangement or understanding with, or relating to, the business or operations of the Company; (ii) any loan, arrangement, understanding, agreement or contract for or relating to indebtedness of the Company; or (iii) any property (real, personal or mixed), tangible or intangible, used or currently intended to be used in, the business or operations of the Company. Following the Closing, the Company will not have any obligations of any kind to any Shareholder or any Affiliate of a Shareholder except for (i) accrued salary for the pay period commencing immediately prior to the Closing Date; and (ii) the obligations set forth at Section 4.5(c) of the Disclosure Schedule (collectively, the "Related Party Obligations").

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4.6 Investments in Others. The Company does not have any investment in or advance or loan to or guarantee of, or any commitment to make any investment in, advance or loan to or guarantee of, any person, except as set forth in the Interim Balance Sheet (as defined below).

#### 4.7 Financial Statements.

(a) The Company's audited balance sheets as of the end of, and related audited statements of income, retained earnings and cash flow for, the fiscal years ended December 31, 1998 (the "Financial Statement Date"), December 31, 1997, and December 31, 1996 are attached hereto at Section 4.7(a) of the Disclosure Schedule and are referred to herein collectively as the "Financial Statements" and individually as the "1998 Financial Statements," "1997 Financial Statements" and "1996 Financial Statements," respectively. The Financial Statements (i) present fairly, in all material respects, the financial position, results of operations and changes in cash flows, as the case may be, of the Company at the Financial Statement Date; and (ii) were prepared in accordance with GAAP in a manner consistent with the Company's historic GAAP accounting practices applied on a consistent basis, except as otherwise indicated in the text of such statements.

(b) The unaudited balance sheet of the Company as of May 31, 1999 (the "Interim Balance Sheet"), and the related statements of income for the five (5) months ended May 31, 1999 attached at Section 4.7(b) of the Disclosure Schedule, are referred to herein as the "Interim Financial Statements." The Interim Financial Statements (i) present fairly, in all material respects, the financial position and results of operations, as the case may be, of the Company at May 31, 1999; and (ii) except as described in Section 4.7(b) of the Disclosure Schedule were prepared in conformity with GAAP and in a manner consistent with the Company's historic accounting practices applied on a consistent basis, subject to normal and customary year-end closing adjustments, the lack of full footnote presentations, and lack of statements of cash flows and retained earnings.

(c) Attached as Schedule 4.7(c) are reports showing year-to-date sales information and comparable store net sales information for

each of the Company's retail store locations (i) on an annual basis for the year ended December 31, 1998 compared with the year ended December 31, 1997; (ii) on a monthly basis for the five-month period ended May 31, 1999 compared with the five-month period ended May 31, 1998; and (iii) on a weekly basis for the period from June 1, 1999 to the date hereof compared with the same period in 1998. Such reports are true and complete and correctly present actual year-to-date sales and comparable store net sales of Seller in all material respects.

4.8 Unreported and Contingent Liabilities. Except as set forth at Section 4.8 of the Disclosure Schedule or as set forth in the 1998 Financial Statements and the Interim Financial Statements, the Company has no liabilities or obligations, whether accrued, absolute, fixed, known or unknown, contingent or otherwise, existing, arising out of or relating to any transaction entered into, or state of facts existing, on or prior to the date of this Agreement. The Company's liabilities under Guardian Life Insurance Company and State Workers Compensation claims have been fully accrued on the Financial Statements in an amount not less than that required by GAAP.

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4.9 Absence of Certain Changes. Since December 31, 1998, the business of the Company has been conducted only in the ordinary course and consistent with past practices, and except as set forth at Section 4.9 of the Disclosure Schedule, there has not been (a) any material adverse change (or any event that will have a material adverse change) in the condition (financial or otherwise), assets, liabilities, earnings, business, operations or prospects of the Company ("Material Adverse Change"); (b) any damage, destruction, casualty or other similar occurrence or event (whether or not insured against), which either singly or in the aggregate materially adversely affects the assets, liabilities, earnings, business or operations of the Company; (c) any mortgage or pledge of or encumbrance attached to any of the properties or assets of the Company not in the ordinary course of business; (d) any incurrence or creation of any liability, commitment or obligation in excess of \$10,000 by the Company, except unsecured trade payables and other unsecured liabilities incurred in the ordinary course of business, and capital expenditures or contracts and commitments for capital expenditures made or entered into in the ordinary course of business; (e) any sale, transfer or other disposition by the Company of any of its assets (other than the Personal Assets as defined in Section 6.1(m)) in excess of \$50,000 in the aggregate, except for inventory sold by the Company in the ordinary course of business; (f) any amendments or changes to the Certificate of Incorporation or Bylaws of Company; (g) any labor trouble, claim of wrongful discharge, or unlawful labor practice or claim (except matters in the aggregate will not result in potential damages greater than \$20,000); (h) any change in accounting methods or practices (including any change in depreciation or amortization policies or rates) by Company; (i) any revaluation by Company of any of its assets; (j) any declaration, setting aside or payment of a dividend or other distribution or deposit with respect to the capital stock of Company or a Shareholder, or direct or indirect redemption, purchase or other acquisition by Company of any of its capital stock except such dividends or other distributions totaling \$1,410,000 which dividends and distributions were consistent with the historical practice and policy of Company; (k) any increase in the salary or other compensation payable or to become payable to any of its officers, directors, employees or advisors, or the declaration, payment or commitment or obligation of any kind for the payment of a bonus or other additional salary or compensation to any such person and except for increases, payments or commitments in the ordinary course of business and consistent with past practices; (l) any amendment or termination of any material contract, agreement or license to which Company is a party or by which it is bound; (m) any loan by Company to any person or entity, incurring by Company of any indebtedness, guaranteeing by Company of any indebtedness, issuance or sale of any debt securities of Company or guaranteeing of any debt securities of others, except for advances to employees for travel and business expenses in the ordinary course of business, consistent with past practices; (n) any waiver or release of any material right or claim of Company, including any write-off or other compromise of any account receivable of Company other than in the ordinary course of business and consistent with past practices; (o) any commencement or notice or threat of commencement of any lawsuit or proceeding against or governmental investigation of Company or its affairs; or (p) any issuance or sale by Company of any of its shares of capital stock, or securities or option or warrants exchangeable, convertible or exercisable therefor, or of any other of its securities.

4.10 [Reserved].

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4.11 Licenses and Permits. Section 4.11(a) of the Disclosure

Schedule sets forth all licenses and permits (including food stamp licenses, FDA licenses, food permits, liquor licenses, business licenses, fictitious name certificates, etc.) necessary for the conduct of the Company's business as now operated. Such licenses and permits are valid and in full force and effect. No action or claim is pending, or, to the knowledge of the Company, threatened, to revoke or terminate any such licenses or permits or declare any of them invalid in any respect and, except as set forth on Section 4.11(b) of the Disclosure Schedule, the transactions contemplated by this Agreement will not result in the revocation or termination of any such licenses or permits. A list of all such licenses and permits is attached at Section 4.11 of the Disclosure Schedule.

4.12 Litigation. Except as set forth at Section 4.12 of the Disclosure Schedule, there is not pending against the Company or, to the knowledge of the Company, threatened against the Company any claim, action, suit, arbitration proceeding, governmental proceeding or investigation or other proceeding of any character (the "Proceeding") (a) demanding money damages from the Company, or (b) demanding a temporary restraining order, preliminary injunction or a permanent injunction or order of specific performance against the Company. All of the items set forth on Section 4.12 of the Disclosure Schedule are fully covered by insurance except as indicated on such section of the Disclosure Schedule. All pending Proceedings relating to or involving the Company (or any of its officers or directors as such) are adequately provided for in the Interim Balance Sheet in accordance with GAAP. The Company is not subject to any judgment, decree, injunction, rule or order of any court, and the Company is not subject to any governmental restriction which is reasonably likely (i) to have a material adverse effect on the assets, liabilities, results of operations, financial condition, business or prospects of the Company or (ii) to cause a material limitation on Parent's ability to operate the business of the Company after the Closing. There are no Proceedings pending, nor to the best of the Company's knowledge, threatened, under or pursuant to any warranty, whether expressed or implied, on products sold by the Company.

4.13 Inventory. All of the Company's Inventory was purchased in the ordinary course of business. The Inventory is maintained on the financial records of the Company using historical valuation methods and practices consistent with those used in preparing the 1998 and 1997 Financial Statements as well as the Interim Financial Statements. All items of Inventory (i) are of good and merchantable quality for sale or use in the ordinary course of business; (ii) are not spoiled, damaged, crushed, defaced, defective, past their expiration date, or subject to recall; (iii) are in conformity with all applicable government requirements (including the Consumer Product Safety Act, Federal Hazardous Substances Act, Flammable Fabrics Act, and other federal and state product safety and labeling laws); and (iv) do not violate the intellectual property rights of any third party (including trademark, service mark, patent, or trade dress). Any items of Inventory which do not satisfy the requirements of the foregoing sentence shall be marked down to \$0.00 on the Closing Balance Sheet and removed and retained by Shareholders. "Inventory" shall mean all of the Company's inventory and merchandise whether located in the stores, in a warehouse, or in transit to the stores, together with the Company's packaging Inventory and displays.

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#### 4.14 Real Property.

(a) The Company does not own, nor has it ever owned, any real property. Section 4.14(a) of the Disclosure Schedule sets forth a true and correct list of all real property currently leased by the Company (together with all fixtures and improvements thereon, the "Leased Real Property," broken down as follows:

- (A) all leases for retail stores of the Company open on the date hereof;
- (B) all leases for retail stores of the Company that are not open as of the date hereof;
- (C) a list of all leases for retail stores of the Company under negotiation; and
- (D) all other real property leases of the Company, including the warehouse and office leases.

(b) The Company is not a tenant under any leases of real property used by the Company except as reflected in Section 4.14(a) of the Disclosure Schedule. The Company has previously delivered to Parent correct and complete copies of all of the leases and related amendments, modifications, subleases, and store, warehouse or headquarters license agreements.

(c) Except as set forth at Section 4.14(c) of the Disclosure Schedule, the Company has a valid leasehold interest in the Leased Real Property, free and clear of any mortgages, pledges, liens, security interests or other encumbrances of any nature.

(d) The leases of the Leased Real Property are in full force and effect. The Company has neither sent nor received written notice of any default under the leases of the Leased Real Property, and the Company has not breached any material covenant, agreement or condition contained in any lease of the Leased Real Property, nor has there occurred any event which with the passage of time or the giving of notice or both would constitute such a breach by the Company. The Company has paid in full or accrued all amounts due and owing, and has satisfied in full or accrued all of its liabilities and obligations, under the leases. The Company has not received any notice of any pending claim by any landlord or other third party adverse to the possessory rights of the Company under any leases, nor any other written notice of uncured default by the Company regarding any of the Leased Real Estate. The Company has the right to use such Leased Real Estate for the operations presently conducted. The Company is the tenant under all of the leases. The leases for any Leased Real Property which constitutes warehouse, office or other non-retail space may be terminated without penalty upon not more than six months' notice to the landlord thereunder.

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(e) To the best of Company's knowledge, no portion of the Leased Real Property, or any of the buildings and improvements located thereon, violates in any material respect any law, rule, regulation, ordinance, or statute, including those relating to zoning, building, land use, environmental, health and safety, fire, air, sanitation and noise control. To the knowledge of the Company, except as set forth in Section 4.14(e) of the Disclosure Schedule, no pending or threatened condemnation or similar proceeding exists with respect to the Leased Real Property.

(f) Except as set forth at Section 4.14(f) of the Disclosure Schedule, the improvements and fixtures located on the Leased Real Property are in good condition and working order, without any material defect of any kind. The Company is in possession of all of the Leased Real Property and all improvements and fixtures located thereon, and the Company has adequate rights of ingress and egress with respect to such Leased Real Property and the improvements and fixtures located thereon.

4.15 Environmental Matters. Except as set forth at Section 4.15 of the Disclosure Schedule:

(a) the Company possesses, and is in compliance in all material respects with, all permits, licenses and government authorizations and has filed all notices that are required under local, state and federal laws and regulations relating to protection of the environment, pollution control, product registration and hazardous materials (as defined below) ("Environmental Laws"), and the Company is in compliance in all material respects with all applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in those laws or contained in any law, regulation, code, plan, order, decree, judgment, notice, permit or demand letter issued, entered, promulgated or approved thereunder;

(b) the Company has not received any notice of actual or threatened liability under the Federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or any similar state or local statute or ordinance from any governmental agency or any third party and there are no facts or circumstances which could reasonably form the basis for the assertion of any claim against the Company under any Environmental Laws including, without limitation, CERCLA or any similar local, state or foreign law with respect to any on-site or off-site location;

(c) the Company has not entered into, agreed to nor contemplates entering into any consent decree or order, and is not subject to any judgment, decree or judicial or administrative order relating to compliance with, or the cleanup of hazardous materials under, any applicable Environmental Laws;

(d) the Company has not been alleged to be in violation of, and has not been subject to any administrative or judicial proceeding pursuant to, applicable Environmental Laws or regulations either now or any time during the past five years;

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(e) the Company is not subject to any claim, obligation, liability, loss, damage or expense of whatever kind or nature, contingent or otherwise, incurred or imposed or based upon any provision of any Environmental Law and arising out of any act or omission of the Company or its respective employees, agents or representatives or arising out of the ownership, use, control or operation by the Company of any plant, facility, site, area or property (including, without limitation, any plant, facility, site, area or property currently or previously owned or leased by the Company) from which any hazardous materials were released into the environment (the term "release" meaning any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, and the term "environment" meaning any surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or the ambient air);

(f) the Company has heretofore provided Parent with true, correct and complete copies of all files of the Company relating to environmental matters (or an opportunity to review such files), and Section 4.15(f) of the Disclosure Schedule sets forth the amount of all fines, penalties or assessments paid within the last five years by the Company with respect to environmental matters, including the date of payment and the basis for the assertions of liability; and

(g) to the best of Company's and Shareholder's knowledge, neither the Leased Real Property nor improvements or equipment included within the Leased Real Property contains any asbestos, PCBs or underground storage tanks.

As used in this Section 4.15, the term "hazardous materials" means any pollutant, hazardous substance, toxic, ignitable, reactive or corrosive substance, hazardous waste, special waste, industrial substance, by-product, process intermediate product or waste, petroleum or petroleum-derived substance or waste, chemical liquids or solids, liquid or gaseous products, or any constituent of any such substance or waste, the use, handling or disposal of which by the Company is in any way governed by or subject to any applicable law, rule or regulation of any governmental or regulatory authority.

4.16 Compliance With Laws Generally. The Company has complied and is in current compliance with all laws, rules, regulations and ordinances to which it is subject or by which it is bound (including the Product Safety Laws), except those that will not result in claims, liabilities or obligations which, in the aggregate, exceed \$20,000. The Company's purchasing and sales practices comply with all laws, rules, regulations and ordinances as well as all restrictions to which the Company is subject. No action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed, commenced, or, to the best of the Company's knowledge, threatened against the Company alleging any uncured failure so to comply. There are no existing or, to the knowledge of the Company, proposed laws, rules, regulations or ordinances of such a nature as could reasonably be expected to materially adversely affect the continued conduct or profitability of the Company's business in the manner presently conducted.

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#### 4.17 Employee Benefit Plans.

(a) Company has previously provided Parent with a document setting forth a true and complete list of (i) the names, titles, locations of employment, annual salaries and other compensation and benefits of all employees of the Company; and (ii) the wage rates for non-salaried employees of the Company. Except as set forth at Section 4.17(a) of the Disclosure Schedule, there are no employees of the Company who are on military, disability, family or other leave of absence (whether or not approved) and who have reemployment rights or rights to health care continuation coverage under Part 6 of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or similar rights to benefits continuation.

(b) Section 4.17(b) of the Disclosure Schedule contains a true and complete list of all the following agreements or plans ("Benefit Plans") which are presently in effect or which have previously been in effect and which cover or covered any current or former employees, officers, directors or independent contractors of the Company ("Employees"):

(i) any employee benefit plan as defined in Section 3(3) of ERISA, under which the Company has any outstanding, present, or future obligation or liability, or under which any Employee has any present or

future right to benefits which are covered by ERISA; or

(ii) any other pension, profit sharing, retirement, deferred compensation, stock purchase, stock option, incentive, bonus, vacation, severance, disability, hospitalization, medical, life insurance, or other employee benefit plan, program, policy, or arrangement, written or oral, which the Company maintains or to or under which the Company has any outstanding, present, or future obligations to contribute or make payments, whether voluntary, contingent or otherwise.

(c) The Company has made available to Parent true, correct and complete copies of all documents relating to the Benefit Plans, including but not limited to: (i) all plan documents, amendments, trust instruments and other material agreements adopted or entered into in connection with each of the Benefit Plans; (ii) all insurance and annuity contracts related to any Benefit Plans; (iii) all administrative notices and forms used for the Benefit Plans, including the notices and election forms used to notify employees and their dependents of their continuation coverage rights under the Company's group health plans; and (iv) the most recently available Form 5500 annual reports, certified financial statements, actuarial reports, summary plan descriptions and favorable determination letters for the Benefit Plans. Since the date these documents were supplied to Parent, no plan amendments have been adopted, no changes to these documents have been made, and no amendments or changes will be adopted or made prior to the Closing Date.

(d) All of the Benefit Plans and the related trusts subject to ERISA comply and have been administered in compliance with (i) the provisions of ERISA; (ii) all provisions of the Code applicable to secure the intended tax consequences; (iii) all applicable state and federal securities laws; and (iv) all other applicable laws, rules, regulations and collective bargaining

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agreements, except where the failure to so comply or to be so administered would not result in any monetary penalty against the Company. The Company has not received any written notice from any governmental agency or instrumentality questioning or challenging such compliance.

(e) The Company has complied with the continuation coverage requirements of Section 1001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and ERISA Sections 601 through 608 ("COBRA").

(f) Neither the Company, its ERISA Affiliates (that is, any entity which, together with the company, will be treated as a single employer within the meaning of Code Section 414(b), (c), (m) or (o)), nor any administrator or fiduciary of any Benefit Plan (or agent or delegate of any of the foregoing) has engaged in any transaction or acted or failed to act in any manner that could subject the Company to any direct or indirect liability (by indemnity or otherwise) for a breach of any fiduciary or co-fiduciary duty under ERISA. No party in interest (as defined in ERISA) or disqualified person (as defined in the Code) of any Benefit Plan has engaged in any prohibited transaction (within the meaning of ERISA Section 406 or Code Section 4975).

(g) No Benefit Plan is subject to Title IV of ERISA, and neither the Company nor any of its ERISA Affiliates have incurred any liability under Title IV of ERISA arising in connection with the termination of any plan covered or previously covered by Title IV of ERISA that could become, after the Closing Date, an obligation of Sub or any of its ERISA Affiliates.

(h) Neither the Company nor any of its ERISA Affiliates currently is a party to any pension or welfare plan that is a multiemployer plan within the meaning of ERISA Section 4001(a)(3) ("Multiemployer Plan"). Neither the Company nor any of its ERISA Affiliates (i) currently has any liability to make any withdrawal liability payment to any Multiemployer Plan; (ii) will incur any such liability for which Sub or its affiliates may become liable; (iii) is delinquent in making any contributions required to be paid to any Multiemployer Plan; or (iv) is involved in any pending dispute with any Multiemployer Plan.

(i) None of the Benefit Plans provides welfare benefits, including, without limitation, death or medical benefits (whether or not insured), with respect to current or former Employees beyond their retirement or other termination of service (other than coverage required by COBRA or any similar state law).

(j) Levels of insurance reserves, trust funding and accrued liabilities with regard to all Benefit Plans (to which such reserves or liabilities do or should apply) are described at Section 4.17(j) of the Disclosure Schedule, and such levels are reasonable and sufficient to provide

for all incurred but unreported claims and any retroactive or prospective premium adjustments.

(k) Each Benefit Plan which is intended to be qualified under Code Section 401(a) ("Qualified Retirement Plan") is qualified in form and operation under Code Section 401(a) and its related trust is tax-exempt under Code Section 501. For each such plan, the Company

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has received from the Internal Revenue Service a favorable determination letter to the effect that the plan in form satisfies the requirements for qualification under Code Section 401(a) (taking into account the provisions of the Tax Reform Act of 1986 and all subsequent legislation). No amendment to any Qualified Retirement Plan made since applying for such determination letter could cause a disqualification of such plan. Any noncompliance or failure prior to the Closing Date properly to maintain, operate, or administer any Qualified Retirement Plan has not rendered and will not render: (i) such plan or its related trust or Sub or its ERISA Affiliates subject to, or liable (directly or indirectly) for, any taxes, penalties, or liabilities to any person or governmental agency; (ii) such plan subject to disqualification; or (iii) the trust under such plan subject to any liability for taxes.

(l) All contributions (including all employer contributions and employee salary reduction contributions) which are due or withheld have been paid to each such Employee Benefit Plan which is an Employee Pension Benefit Plan and all contributions for any period ending on or before the Closing Date which are not yet due have been paid to each such Employee Pension Benefit Plan or accrued in accordance with the past custom and practice of the Company. All premiums or other payments for all periods ending on or before the Closing Date have been paid with respect to each such Employee Benefit Plan which is an Employee Welfare Benefit Plan.

(m) The Company's records accurately reflect its Employees' employment histories, including their hours of service and years of vesting and eligibility service.

(n) There is no pending or threatened complaint, claim (other than a routine claim for benefits), proceeding, audit, or investigation of any kind in or before any court, tribunal, or governmental agency with respect to any Benefit Plan.

#### 4.18 Intellectual Property.

(a) "Intellectual Property" means (a) all inventions, patents, and patent applications; (b) all trademarks, service marks, trade dress, logos, trade names and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals thereof, including any such Intellectual Property associated with the name "Only \$1", "Only \$One" or other similar store or trade name used by the Company; (c) all copyrightable works and copyrights, and all applications, registrations, and renewals thereof; (d) all trade secrets and confidential business information (including ideas, research, and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals); (e) all other proprietary rights; and (f) all copies and tangible embodiments thereof (in whatever medium).

(b) The Company owns (or has the royalty-free right to use pursuant to license, sublicense, agreement, or permission) all Intellectual Property necessary and used for the operation of its business activities as presently conducted. Each item of Intellectual Property owned

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or available for use prior to the Closing hereunder will be owned or available for the royalty-free use by the Company immediately subsequent to the Closing. The Company has taken all necessary action to protect each item of Intellectual Property that it owns or uses. The Company has not interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties, and neither the Company nor any officers, directors, or employees of the Company has ever received any charge, complaint, claim, demand, or notice alleging such interference, infringement, misappropriation, or violation (including any claim that Company must license or refrain from using any Intellectual Property rights of any third party). To the

best of the knowledge of the Company, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of the Company.

(c) Section 4.18(c)(i) of the Disclosure Schedule identifies each Intellectual Property registration which has been issued to the Company and each pending Intellectual Property application which has been made by the Company. Section 4.17(c)(ii) of the Disclosure Schedule identifies each license, agreement, or other permission which the Company has granted to any third party with respect to any of its Intellectual Property. Section 4.17(c)(iii) of the Disclosure Schedule identifies each license, agreement, or other permission which has been granted to the Company by any third party with respect to any Intellectual Property used in the operation of the Company's business.

(d) Nothing herein shall entitle Parent to the post-closing use or other right to the name "Tehan's" either alone or in other form.

#### 4.19 Tax Matters.

(a) "Tax" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code ss.59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

(b) "Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

(c) The Company has filed all Tax Returns that it was required to file. All such Tax Returns were correct and complete in all respects. All Taxes owed by the Company (whether or not shown on any Tax Return) have been paid. The Company is not currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where the Company does not file Tax Returns that it is or may

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be subject to taxation by that jurisdiction. There are no Security Interests on any of the assets of the Company that arose in connection with any failure (or alleged failure) to pay any Tax.

(d) The Company has withheld, paid or will pay before Closing (subject to the terms of this Agreement) all Taxes required to have been withheld, paid or will pay before Closing (subject to the terms of this Agreement) in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(e) No director or officer (or employee responsible for Tax matters) of the Company expects any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax Liability of the Company either (A) claimed or raised by any authority in writing or (B) as to which any of the directors and officers (and employees responsible for Tax matters) of the Company has knowledge based upon personal contact with any agent of such authority. Section 4.19(e) of the Disclosure Schedule lists all federal, state, local, and foreign income Tax Returns filed with respect to the Company for taxable periods ended on or after December 31, 1994, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Company has delivered to Parent correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Company since December 31, 1994.

(f) The Company has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(g) The Company has not filed a consent under Code ss.341(f) concerning collapsible corporations. The Company has not made any payments, is obligated to make any payments, or is a party to any agreement that under certain circumstances could obligate it to make any payments that will not be deductible under Code ss.280G. The Company has not been a United States real property holding corporation within the meaning of Code ss.897(c)(2) during the applicable period specified in Code ss.897(c)(1)(A)(ii). The Company has

disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code ss.6662. The Company is not a party to any Tax allocation or sharing agreement. The Company (A) has not been a member of an Affiliated Group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Target) or (B) has any Liability for the Taxes of any Person (other than any of the Target and its Subsidiaries) under Reg. ss.1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise.

(h) Section 4.19(h) of the Disclosure Schedule sets forth the following information with respect to the Company as of the most recent practicable date (as well as on an estimated pro forma basis as of the Closing giving effect to the consummation of the transactions contemplated hereby): (A) the basis of the Company in its assets; (B) the amount of any net operating loss, net capital loss, unused investment or other credit, unused foreign tax, or excess

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charitable contribution allocable to the Company; and (C) the amount of any deferred gain or loss allocable to the Company arising out of any Deferred Intercompany Transaction.

(i) The unpaid Taxes of the Company (A) did not, as of the Most Recent Fiscal Month End, exceed the reserve for Tax Liability by more than \$5,000 (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto) and (B) do not exceed that reserve by more than \$5,000 as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Company in filing its Tax Returns.

(j) Company made a valid election under Subchapter S of the Code (the "S Election") to which all persons who were shareholders on the date of such election gave their consent and which became effective on February 1, 1993 (a copy of which is attached as Section 4.19(j) of the Disclosure Schedule and Company is, has been at all times since February 1, 1993 and will continue to be an S corporation (as defined in Section 1361 of the Code) until the day prior to the Effective Time (such period being called the "S Corporation Period"). The cause of the termination of Company's status as an "S" corporation will be the Merger. The period after the S Corporation Period is referred to as the "C Corporation Period."

4.20 No Broker Involved. Neither the Shareholders nor the Company has engaged any broker, finder or agent with respect to the transactions contemplated by this Agreement or with respect to the Company's sale or merger or any other transaction relating to the disposition of the Company's assets.

4.21 Contracts. Section 4.21 of the Disclosure Schedule contains a true and complete list of the following (hereinafter referred to as the "Company Contracts"):

(a) all bonds, debentures, notes, mortgages, indentures or guarantees to which the Company is a party or by which any of its properties or assets (real, personal or mixed, tangible or intangible) is bound pursuant to which any indebtedness of the Company in the aggregate principal amount in excess of \$10,000 is outstanding;

(b) all leases to which the Company is a party or by which any of its properties or assets (real, personal or mixed, tangible or intangible) is bound involving an annual rental payment in excess of \$10,000 individually;

(c) all loans and credit commitments to the Company which are outstanding and pursuant to which any indebtedness of the Company in the aggregate principal amount in excess of \$10,000 is outstanding, together with a brief description of such commitments and the name of each financial institution granting the same;

(d) all contracts or agreements which limit or restrict in any respect the Company from engaging in any business in any jurisdiction;

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(e) all agreements or arrangements that contain any

severance pay or post-employment liabilities or obligations;

(f) all bonuses, deferred compensation, incentive compensation, pension, profit-sharing or retirement plans, or any other employee benefit plans or arrangements;

(g) all employment or consulting agreements, contracts or commitments with any employee, not terminable by Company on thirty days notice without liability;

(h) all agreements or plans, including, without limitation, any stock option plans, stock appreciation right plans or stock purchase plans, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

(i) all agreements of indemnification or guaranties;

(j) all agreements, contracts or commitments containing any covenant limiting the freedom of Company to engage in any line of business or compete with any person;

(k) all agreements, contracts or commitments relating to capital expenditures and involving future obligations in excess of \$5,000 and not cancelable without penalty;

(l) all agreements, contracts or commitments currently in force relating to the disposition or acquisition of assets not in the ordinary course of business or any ownership interest in any corporation, partnership, joint venture or other business enterprise;

(m) all joint marketing or development agreements or distribution agreements; or

(n) all existing agreements, contracts and commitments, written or oral (other than those described in the foregoing provisions of this Section 4.21) to which the Company is a party or by which the Company or any of their respective properties or assets may be bound (i) involving an annual commitment or annual payment by any party thereto of more than \$10,000 individually; (ii) which cannot be terminated by the Company without penalty or further obligations on not more than 90 days' notice; or (iii) which is otherwise material to the Company.

True and complete copies of all Company Contracts, including all amendments thereto, have been made available to Parent. The Company Contracts are valid and enforceable in accordance with their respective terms with respect to the Company (as applicable) and valid and enforceable in accordance with their respective terms with respect to any other party thereto, except as the enforceability may be limited by laws of general application relating to bankruptcy,

insolvency, and debtor's relief and by the general principles of equity. The Company has physical possession of all equipment and other tangible physical assets which are covered by leases. There is not under any of the Company Contracts any existing breach, default or event of default by the Company or event that with notice or lapse of time or both would constitute a breach, default or event of default by the Company, nor does the Company know of, and nor has the Company received notice of, or made a claim with respect to, any breach or default by any other party thereto. To the knowledge of the Company, no customer or supplier which paid the Company or was paid by the Company more than \$10,000 during calendar year 1997 or 1998 intends to terminate or materially alter its level of business with the Company as a result of the transactions contemplated by this Agreement.

4.22 Officers and Employees. Section 4.22 of the Disclosure Schedule contains a true and complete list of all of the officers and managers (except for store managers and warehouse managers) of the Company, specifying their title and annual rate of compensation, bonus eligibility and a true and complete list of all of the employees of the Company as of the date hereof with whom the Company has a written employment agreement or to whom the Company has made verbal commitments which are binding on the Company under applicable law. To Company's knowledge after reasonable inquiry, no employee of Company (i) is in violation of any term of any employment contract, patent disclosure agreement, non-competition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by Company because of the nature of the business conducted or presently proposed to be conducted by Company or to the use of trade secrets or proprietary information

of others; and (ii) has given notice to Company, nor is Company otherwise aware, that any employee intends to terminate his or her employment with Company except for terminations of a nature and number that are consistent with Company's prior experience.

#### 4.23 Labor Relations.

(a) Since January 1, 1996, (1) employees of the Company have not been and are not represented by a labor organization which was either National Labor Relations Board ("NLRB") certified or voluntarily recognized or recognized under foreign law; (2) the Company has not been and is not a signatory to a collective bargaining agreement with any labor organization; (3) no representation election petition has been filed by employees of the Company or is pending with the NLRB and no union organizing campaign involving employees of the Company has occurred or is in progress; (4) no NLRB unfair labor practice claims have been filed and/or are presently pending against the Company or any labor organization representing its employees; (5) no grievance or arbitration demand, whether or not filed pursuant to a collective bargaining agreement, has been filed or is pending against the Company; (6) no hand billing, picketing, work stoppage (sympathetic or otherwise), or other "concerted action" involving the employees of the Company has occurred or is in progress; and/or (7) no breach of contract and/or denial of fair representation claim has been filed or is pending against the Company and/or any labor organization representing its employees;

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(b) Except as set forth in Section 4.23(b) of the Disclosure Schedule, since January 1, 1996, no claim for unpaid wages or overtime or for child labor or record keeping violations has been filed or is pending under the Fair Labor Standards Act, Davis-Bacon Act, Walsh-Healey Act, or Service Contract Act or any other Federal, state, local or foreign law, regulation, or ordinance;

(c) Except as set forth in Section 4.23(c) of the Disclosure Schedule, since January 1, 1996, no discrimination and/or retaliation claim has been filed or is pending against the Company under the 1866 or 1964 Civil Rights Acts, as amended, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, ERISA or any other Federal law or any comparable state fair employment practices act or foreign law regulating discrimination in the workplace;

(d) Since January 1, 1996, if the Company is obligated to develop and maintain an affirmative action plan, no discrimination claim, show cause notice, conciliation proceeding, sanctions or debarment proceeding has been filed or is pending with any Federal agency or any comparable State or foreign agency or court and no desk audit or on-site review is in progress;

(e) Since January 1, 1996, no citation has been issued by Occupational Safety and Health Administration ("OSHA") against the Company and no notice of contest or OSHA administrative enforcement proceeding involving the Company has been filed or is pending;

(f) Since January 1, 1996, no workers' compensation or retaliation claim has been filed or is pending against the Company;

(g) Since January 1, 1996, no citation of the Company has occurred and no enforcement proceeding has been initiated or is pending under Federal or foreign immigration law; and

(h) The Company has not taken any action which would constitute a "mass layoff" or "plant closing" within the meaning of the Worker Adjustment and Retraining Notification Act or otherwise trigger notice requirements or liability under any local or state plant closing notice law.

(i) No employee of the Company is indebted to the Company except in the ordinary course of business consistent with past practices and in no event in excess of \$15,000 in the aggregate.

(j) Except as disclosed on Section 4.23(j) of the Disclosure Schedule, the Company has not entered into any written employment, covenant-not-to-compete, confidentiality, proprietary rights, restrictive covenant, severance, or golden parachute agreement with any present or former employee, consultant, or Affiliate which is currently in effect. The Company has not entered into any agreement, oral or written, with any present or former employee that by its terms

obligates (either on an absolute or contingent basis) the Company or Parent to make any payment on, after, or in connection with the Closing to any present or former employee following his or her termination of employment.

(k) Other than the Shareholders and Joe Burke, none of the key operations employees of the Company has, to the best of Company's knowledge, expressed an intention to resign or retire as a result of the transaction contemplated by this Agreement or for any other reason.

(l) All of Company's employees are employed at the will of the Company and can be terminated by Company without cause at any time after the Closing without liability, penalty, salary continuation, or severance obligations of any sort whatsoever (including without limitation attorneys' fees).

4.24 Insurance. Section 4.24 of the Disclosure Schedule sets forth a true and complete list of the current insurance coverages for the Company, including names of carriers, amounts of coverage and premiums therefor. The Company has made available to the Parent true and complete copies of all such insurance policies.

4.25 Title to Property and Related Matters. The Company has good and valid title to or valid leasehold interest in its assets and property, as reflected in the Interim Balance Sheet or acquired after the date thereof (other than property sold or otherwise disposed of in the ordinary course of business since such date), and all of such assets and property is held free and clear of all title defects, liens, encumbrances, security interests and restrictions whatsoever, except, with respect to all such properties, (a) liens securing debt reflected as liabilities on the Interim Balance Sheet and (b) (i) liens for current taxes and assessments not overdue or in default; and (ii) mechanics', carriers', workmen's, repairmen's, statutory or common law liens relating to payments that are not delinquent.

4.26 Accounts and Notes Receivable. The accounts and notes receivable of the Company reflected on the Interim Balance Sheet arose from bona fide transactions in the ordinary course of business, have been extended on terms consistent with the past practice of the Company, and are not subject to any counterclaims or setoffs other than in the ordinary course (except for the amount of any applicable existing reserves for counterclaims or setoffs), and are fully collectible. At Closing, all loans payable to or receivable from any employees or the Shareholders or their Affiliates will be paid in full.

4.27 Nondisclosed Payments. Neither the Company nor any of the Company's officers or directors, nor anyone acting on behalf of any of them, has made or received any payments not correctly categorized and fully disclosed in the Company's books and records in connection with or in any way relating to or affecting the Company.

4.28 Credit Cards. Section 4.28 of the Disclosure Schedule sets forth a complete and correct list of all credit cards issued or caused to be issued by the Company to any person, firm or entity or under which the Company is or may be liable for charges or payments.

4.29 Business Practices.

(a) Neither the Company nor any director, officer, agent, employee or other Person acting on behalf of the Company has used any Company funds for improper or unlawful contributions, payments, gifts or entertainment, or made any improper or unlawful expenditures relating to political activity to domestic or foreign governmental officials or others. The Company has adequate financial controls to prevent such improper or unlawful contributions, payments, gifts, entertainment or expenditures. Neither the Company nor any current director, officer, agent, employee or other Person acting on behalf of the Company has accepted or received any improper or unlawful contributions, payments, gifts or expenditures. The Company has at all times complied, and is in compliance, in all respects with the Foreign Corrupt Practices Act and all foreign laws and regulations relating to prevention of corrupt practices and similar matters.

(b) There is no agreement (noncompete or otherwise), commitment, judgment, injunction, order or decree to which Company is a party or, to the knowledge of Company, otherwise binding upon Company, which has or reasonably could be expected to have the effect of prohibiting or impairing any business practice of Company, any acquisition of property (tangible or



intangible) by Company or the conduct of business by Company. Without limiting the foregoing, Company has not entered into any agreement under which Company is restricted from selling, licensing or otherwise distributing any of its products to any class of customers, in any geographic area, during any period of time or in any segment of the market.

4.30 Bank Accounts. A true and correct list of the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company maintains safe deposit boxes or accounts of any nature (together with the relevant account numbers and the names of all Persons authorized to draw thereon, make withdrawals therefrom or have access thereto) has been furnished to Parent.

4.31 Affiliates. Section 4.31 of the Disclosure Schedule lists each Person which is an "affiliate" of the Company within the meaning of Rule 145(c) promulgated under the Securities Act (the "Rule 145 Affiliates"). None of the Shareholders nor any Rule 145 Affiliates has, within the 30 days prior to the date of this Agreement, sold, transferred or otherwise disposed of, or in any other way reduced such person's risk with respect to, any shares of Parent Common Stock or other shares of the capital stock of Parent or shares of the capital stock of the Company held by such person.

4.32 Pooling. Since the date two (2) years prior to the date hereof:

(a) the Company has not been a subsidiary or division of another corporation or other entity;

(b) the Company has not effected any transactions changing the relative percentage ownership of the Shareholders in the Company;

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(c) the Company has not purchased any treasury shares or redeemed any shares of capital stock or effected any exchange of securities; or

(d) the Company has not paid nor shall it pay any dividend or made any distribution in excess of amounts consistent with historical Company policies and practices or paid any bonus to shareholder employees that are not consistent with historical company policies and practices.

In addition, the shares of Parent Common Stock issued in the Merger will be shared ratably by the Shareholders based on their respective percentage ownership of the Company capital stock, and there is no agreement among the Shareholders providing for any reallocation of such Parent Common Stock among the Shareholders.

4.33 Reorganization Under Section 368 of the Code. The Company has not taken any action that would cause the Merger to fail to qualify as a reorganization with the meaning of Sections 368(a)(1)(A) and (a)(2)(E) of the Code.

4.34 Full Disclosure. Shareholders have disclosed in writing, or pursuant to this Agreement and the Schedules attached hereto, all facts material to the business, assets, prospects and condition (financial or otherwise) of Company. No representation or warranty to Parent by the Company or Shareholders contained in this Agreement, and no statement contained in the Schedules attached hereto (including the Financial Statements and the Interim Financial Statements), any certificate, list or other writing furnished to Parent by the Company or Shareholders pursuant to the provisions hereof or in connection with the transactions contemplated hereby, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements herein or therein not misleading. All statements contained in this Agreement, the Schedules attached hereto, and any certificate, list, document or other writing delivered pursuant hereto or in connection with the transactions contemplated hereby shall be deemed a representation and warranty of the Shareholders for all purposes of this Agreement. Each representation, warranty, covenant, and agreement of the Company or Shareholders contained in this Agreement is independent of each other representation, warranty, covenant and agreement.

4.35 Securities Law Matters.

(a) Each Shareholder is acquiring the Parent Common Stock issuable in the Merger for his own account, and not as nominee or agent. Such Parent Common Stock is being and will be acquired for the purpose of investment and not with a view to distribution or resale thereof; subject, nevertheless, to the condition that, except as otherwise provided herein or in the Registration Rights Agreement and subject to compliance with applicable

securities laws, the disposition of the property of such Shareholder shall at all times be within his control.

(b) Each Shareholder understands that he must bear the economic risk of its investment for an indefinite period of time because the Parent Common Stock issuable in the

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Merger is not, and may not be, registered under the Securities Act or any applicable state securities laws, except as may be provided in this Agreement and the Registration Rights Agreement, and may not be resold unless subsequently registered under the Securities Act and such other laws or unless in the opinion of counsel to Parent an exemption from such registration is available.

(c) Each Shareholder represents that he is a sophisticated investor and has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of its investment in the Parent Common Stock issuable in the Merger. Such Shareholder further represents that he is an "accredited investor" as such term is defined in Rule 501 of Regulation D of the SEC under the Securities Act with respect to the purchase of the Parent Common Stock pursuant to the Merger.

(d) Each Shareholder hereby acknowledges that the shares of Parent Common Stock to be issued in the Merger (unless no longer required in the opinion of counsel to Parent) shall bear a legend substantially in the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE SOLD OR TRANSFERRED WITHOUT COMPLIANCE WITH THE REGISTRATION OR QUALIFICATION PROVISIONS OF APPLICABLE FEDERAL AND STATE SECURITIES LAWS OR APPLICABLE EXEMPTIONS THEREFROM.

(e) Each Shareholder certifies that: (i) the name, address and social security number set forth on Section 4.4(a) of the Disclosure Schedule are each true, complete and correct; and (ii) such Shareholder is not subject to backup withholding because (A) the undersigned has not been notified that the undersigned is subject to backup withholding as a result of a failure to report all interest or dividends; or (B) the Internal Revenue Service has notified the undersigned that the undersigned is no longer subject to backup withholding.

(f) Each Shareholder represents that he has carefully reviewed this Agreement and understands its contents and the significance thereof and has consulted with counsel with regard thereto. Each Shareholder understands that (i) in issuing the Parent Common Stock issuable in the Merger, Parent is relying upon the representations and warranties of such Shareholder in this Section 4.35 and (ii) receipt by Parent of the Certificates and the representations in this Agreement is an inducement and a condition to Parent's obligation to deliver any shares of Parent Common Stock to such Shareholder. The acquisition by such Shareholder of such Parent Common Stock shall constitute a confirmation by him of the foregoing.

4.36 Due Diligence. Each Shareholder acknowledges that he has been given full and fair opportunity to review and discuss, and has in fact, reviewed and discussed information relating to the Parent's business, affairs and current prospects with such officers of the Parent and

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others as he has deemed appropriate or desirable in connection with the transactions contemplated by this Agreement (including without limitation each registration statement, report and proxy or information statement filed by Parent with the SEC (collectively, the "Parent SEC Reports")). Such Shareholder further acknowledges that he has requested, received and reviewed such information, undertaken such investigation and made such further inquiries of officers of the Parent and others as it has deemed appropriate or desirable in connection with such transactions.

#### ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB

Parent and Sub jointly and severally represent and warrant to the Company that, as of the date of this Agreement and on the Closing Date:

5.1 Corporate Organization. Parent is a corporation validly

existing and in good standing under the laws of the Commonwealth of Virginia and has all requisite corporate power and authority to own, operate and, lease its property and to carry on its business as now being conducted. The Sub is a corporation validly existing and in good standing under the laws of the State of New York and has all requisite corporate power and authority to own, operate and, lease its property and to carry on its business as now being conducted.

5.2 Authorization and Approval of Agreement. Parent and Sub have all requisite corporate power and authority to execute and deliver this Agreement and the other agreements, documents and instruments executed and delivered by Parent or Sub in connection with the transactions contemplated by this Agreement (the "Parent Ancillary Agreements"), and to fully perform the obligations required to be performed by them hereunder and thereunder. All corporate proceedings required by Parent's and Sub's respective charter documents or otherwise required by law for the execution and delivery of this Agreement and the Parent Ancillary Agreements and for the consummation of the transactions provided for herein and therein have been duly taken. This Agreement and each of the Parent Ancillary Agreements has been duly and validly executed and delivered by Parent and Sub and is enforceable against Parent and Sub in accordance with its terms, except as the enforceability may be limited by laws of general application relating to bankruptcy, insolvency and debtors' relief, and by the general principles of equity.

5.3 Ability to Carry Out Agreement. The execution and delivery of this Agreement and the Parent Ancillary Agreements by Parent and Sub and the performance by Parent and Sub of their obligations hereunder and thereunder will not conflict with, violate or result in any breach of or constitute a default under any provisions of Parent's and Sub's Articles or Certificate of Incorporation or Bylaws or, except for the Parent's credit facilities and private placement notes, of any of the provisions of any indenture, mortgage, lease, agreement, license, permit, instrument, order, arbitration award, judgment, decree, law, ordinance, regulation or any other restriction of any kind or character to which Parent or Sub is a party or by which either of them is bound. Except for compliance with the applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") and the Securities Act, the Securities Exchange Act of 1934 (the

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"Exchange Act"), applicable state securities laws, the bylaws of the NASD, any listing agreement with respect to the Parent Common Stock, and the filing of the Certificate of Merger with the State of New York, no consent of any governmental authority or other third party is required to be obtained on the part of Parent in connection with Parent's execution, delivery or performance of this Agreement or the Parent Ancillary Agreements.

5.4 Investment Representation. Parent and Sub are acquiring the Company Shares for investment and not with a view to, or for resale in connection with, any distribution of the Company Shares.

5.5 No Broker Involved. Parent and Sub have not expressly or impliedly engaged any broker, finder or agent with respect to the transactions contemplated by this Agreement.

5.6 Parent Common Stock. The shares of Parent Common Stock to be issued in the Merger will be validly issued, fully paid, nonassessable and free of preemptive rights.

5.7 Parent Common Stock Price. Between the date of this Agreement and the Effective Time, Parent shall not make any public announcements or governmental filings which, as of their respective release or filing dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, the effect of which is to cause an increase in the trading price of Parent Common Stock. The foregoing sentence shall in no way restrict the ability of Parent, its officers and directors and the officers and directors of its Affiliates from making public announcements or governmental filings, presenting at investment conferences or otherwise communicating with shareholders, analysts, or the general public concerning this transaction or the Parent's business, operations, or prospects.

#### ARTICLE 6 CERTAIN COVENANTS

6.1 Conduct of Business. The Company covenants and agrees that from the date of this Agreement to the Closing Date, the Company shall (except as otherwise consented to in writing by Parent):

(a) carry on its business in a manner consistent with prior practice and only in the usual and ordinary course, and use reasonable

efforts to preserve its business organization intact and conserve the good will and relationships of its customers, suppliers and others having business relations with it;

(b) maintain its existence and good standing in its jurisdiction of organization plus in each jurisdiction in which the ownership or leasing of its property or the conduct of its business requires such qualification;

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(c) duly and timely file or cause to be filed all reports and returns required to be filed with any governmental body, agency or authority and promptly pay or cause to be paid when due all taxes, assessments and governmental charges, including interest and penalties levied or assessed, unless diligently contested in good faith by appropriate proceedings;

(d) maintain in existing condition and repair, consistent with past practice, all buildings, offices, shops and other structures located on the Leased Real Property, and all equipment, fixtures and other tangible personal property located on the Leased Real Property;

(e) give Parent and Parent's employees, counsel, accountants and advisors, full access upon reasonable notice during normal business hours to all of the properties, personnel, financial and operating data, books, tax returns, contracts, commitments, and records of the Company in connection with reviewing the Company and its respective properties and operations;

(f) maintain in full force and effect all existing policies of insurance except for replacements or renewals in the ordinary course of business;

(g) use its reasonable best efforts to permit the Company to retain the material benefits provided by all existing contracts and licenses to which the Company is a party under arrangements similar to those in effect prior to the Closing Date;

(h) use its reasonable best efforts to assist Parent and Sub in retaining the continued services of the Company's key employees, except for Shareholders and Joe Burke.

(i) not amend its charter documents or bylaws;

(j) not authorize for issuance, issue or deliver any additional shares of its capital stock or securities convertible into or exchangeable for shares of its capital stock, or issue or grant any right, option or other commitment for the issuance of shares of its capital stock or of such securities, or split, combine or reclassify any shares of its capital stock;

(k) not incur any liability, commitment or obligation, except unsecured current and trade liabilities and other unsecured liabilities incurred in the ordinary course of business;

(l) not borrow, or agree to borrow, any funds other than pursuant to its existing loan agreements or otherwise in the ordinary course of business;

(m) not sell, transfer or otherwise dispose of assets, except for the sale or disposition of obsolete or damaged tangible personal property and except for (i) the sale of inventory and other assets in the ordinary course of business; and (ii) sales of Company-owned vehicles, art, and other assets identified on Schedule 6.1(m) ("Personal Assets") to one or more Shareholders for cash equal to the book value of the Personal Assets);

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(n) except for amounts committed for emergency repairs, not make any material capital commitments;

(o) not mortgage, pledge or encumber any of its assets or guaranty the obligations of any party except in the ordinary course of business;

(p) except as set forth in Section 11.4, not make

any adjustments in the salary or wage rate of, or make or authorize any bonus, severance, or termination payments to or consulting arrangements with, any officer or employee or amend or adopt any employee benefit plan, without Parent's prior written consent, other than salary increases for the 1999 year which shall be made in amounts consistent with past practices;

(q) take any action with the intention of causing any of the representations and warranties made herein to be inaccurate on the Closing Date;

(r) not dispose of or permit to lapse any rights to the use of any patent, trademark, trade name, license or copyright, or dispose of or disclose to any person, any trade secret, formula, process, technology or know-how not heretofore a matter of public knowledge;

(s) not declare, pay or set aside for payment any dividend or other distribution in respect of the capital stock or other equity securities or equity interests of the Company and not redeem, purchase or issue any shares of the capital stock or other securities or equity interests of the Company or rights or obligations convertible into or exchangeable for any shares of the capital stock or other securities or equity interests of the Company or obligations convertible into such, or any options, warrants or other rights to purchase or subscribe to any of the foregoing;

(t) deliver to Parent on or prior to the fifteenth (15th) business day of each month a balance sheet of the Company in the form of the Interim Balance Sheet as of the end of the prior month and an income statement for such month in each case accompanied by a certificate executed by the chief financial officer on behalf of the Company that such statements have been prepared in accordance with the standards set forth in Section 4.7(b); and

(u) not take any action outside the ordinary course of business consistent with past practice (unless contemplated by this Agreement) without having notified Parent and KPMG of such proposed action and obtaining the advice of KPMG that such action will not jeopardize the characterization of the Mergers as a "pooling of interests" for accounting purposes.

6.2 Public Announcements. As soon after execution of this Agreement as is practicable, Parent, at its option, shall have the right to issue a press release relating to the subject matter of this Agreement and the transactions contemplated thereby. The timing and content of all other announcements regarding any aspect of this Agreement or the Merger to the financial community, government agencies, employees or the general public shall be mutually agreed upon

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by Parent and the Company in advance (unless Parent or the Company is advised by counsel that any such announcement or other disclosure not mutually agreed upon in advance is required to be made by law, SEC policy or regulation, any applicable bylaw of the NASD or any listing agreement relating to the Parent Common Stock).

6.3 Supplements to Schedules. From time to time prior to the Closing Date, the Company and Parent will each promptly supplement or amend the respective disclosure schedules which they have delivered pursuant to this Agreement with respect to any matter hereafter arising which, if existing or occurring at or prior to the date of this Agreement, would have been required to be set forth or described in the disclosure schedule or which is necessary to correct any information in any such disclosure schedule which has been rendered inaccurate thereby. No supplement or amendment to any such disclosure schedule shall have any effect for the purpose of determining satisfaction of the conditions set forth in Sections 8.1(a) or 9.1(a) of this Agreement or establishing the existence of any breach or inaccuracy of any representation or warranty made by the Company or any Shareholder in this Agreement.

6.4 Pooling of Interests Accounting. From and after the date hereof and until the Closing Date, neither Company nor the Shareholders, nor any of their respective subsidiaries or other Affiliates, shall take any of the actions specified in Section 4.32 or any other action that might jeopardize the characterization of the Merger as a "pooling of interests" for accounting purposes, except as expressly authorized by this Agreement.

6.5 Antitrust Filing. As soon as practicable following the execution of this Agreement, both Parent and Company shall file an Antitrust Improvements Act Notification and Report Form under the HSR Act (the "Antitrust Filing") relating to the transactions contemplated by this Agreement with the Federal Trade Commission and the Department of Justice. Parent and Company shall use their respective commercially reasonable efforts to take all action necessary, proper and advisable under applicable laws and regulations to cause

the expiration or termination of the waiting periods under the HSR Act as soon as practicable.

6.6 No Solicitation of Transactions.

(a) Until the earlier of (i) the Closing or (ii) the termination of this Agreement pursuant to Article 10, the Company agrees that neither it nor its officers, directors, key employees, agents, representatives (including, without limitation, investment bankers, attorneys, accountants, financial advisors and consultants), Affiliates (or to Company's knowledge, any other Shareholder) shall directly or indirectly:

(i) Solicit, encourage, initiate or further the submission of proposals or offers from any Third Party relating to any Alternative Transaction. A "Third Party" is any individual, firm, corporation, partnership, association, group (as defined in Section 13(d)(3) of the Exchange Act) or person or entity, individually or collectively (including, without limitation, any managers or other employees of the Company or any affiliates) other than Parent or Merger Sub.

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An "Alternative Transaction" is any acquisition or purchase of all or any substantial portion of the assets of, or any equity interest (excluding the exercise of outstanding stock options under the Company Stock Option Plan) in, the Company or any merger, consolidation, business combination, or similar transaction with the Company, other than the transactions contemplated by this Agreement;

(ii) Participate in any discussions or negotiations regarding, or furnish to any Third Party, any confidential information with respect to the Company in connection with any Alternative Transaction;

(iii) Enter into or approve or recommend any agreement, plan or understanding with any Third Party with respect to any Alternative Transaction; or

(iv) Otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, or publicly announce any effort or attempt by any Third Party to undertake or seek to undertake any Alternative Transaction.

(b) In the event the Company receives any offer or indication of interest from any Third Party relating to any Alternative Transaction, the Company shall promptly (and in no event later than 24 hours) notify Parent in writing of the details of the offer or indication of interest, except that the identity of the Third Party is not required to be disclosed.

(c) The Company shall immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Third Party relating to Alternative Transaction, whether conducted prior to the date of this Agreement or thereafter. The Company agrees not to release any Third Party from any confidentiality or standstill agreement to which the Company is a party.

(d) The Company shall ensure that the officers, directors, key employees, agents, representatives and Affiliates of the Company are aware of the restrictions described in this Section 6.6.

6.7 Shareholder Approval. The Company and Shareholders will take all action necessary to carry out the purposes of this Agreement including without limitation acting by unanimous written consent to approve the Merger and the adoption of this Agreement by Company.

6.8 Dissenters' Rights Notices. The Company, in cooperation with Parent, shall timely provide all notices and other communications as are required under New York Law in connection with statutory dissenters' rights, to the extent applicable to the Merger.

6.9 Shareholder Representative.

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(a) The Shareholders hereby select Richard J. Tehan (the "Shareholder Representative") to act for and on behalf of all such

Shareholders with respect to all matters arising in connection with Article 8 and the Escrow Agreement, including, without limitation, the power and authority, in his or her sole discretion, to:

(i) negotiate, determine, defend and settle any dispute which may arise under Article 8 or the Escrow Agreement; and

(ii) make, execute, acknowledge and deliver any releases, assurances, receipts, requests, instructions, notices, agreements, certificates and any other instruments, and to generally do any and all things and to take any and all actions which may be requisite, proper or advisable in connection with Article 7 or under the Escrow Agreement.

(b) The Shareholders by majority vote may replace the Shareholder Representative at any time with a substitute Shareholder Representative who shall have all the powers and responsibilities of the Shareholder Representative set forth in this Section 6.9.

(c) Neither the Shareholder Representative, nor any substitute Shareholder Representative, shall be liable to any Person for any action taken or any omission to act, in good faith, in connection with the Shareholder Representative's responsibilities as Shareholder Representative.

(d) Upon request by Parent, the Shareholder Representative, or any substitute Shareholder Representative, shall promptly provide Parent with a written certification of his or her selection and of the address for notices to such Shareholder Representative. Parent may thereafter deal exclusively with the Shareholder Representative in connection with the claims procedure in reliance on such certification. Whenever in connection with the provisions of this Agreement or the Escrow Agreement, Parent shall receive any certificate or other written correspondence from the Shareholder Representative, such certificate or other written correspondence shall be full authorization to Parent for any action taken or suffered in good faith by it under the provisions of this Agreement or the Escrow Agreement in reliance thereon.

#### 6.10 Certain Shareholder Covenants.

(a) No Shareholder shall sell, transfer or otherwise dispose of, or in any other way reduce such person's risk with respect to, any shares of Parent Common Stock received in the Merger or other shares of the capital stock of Parent until after such time as financial results covering at least 30 days of post merger combined operations of Parent and the Company have been published (within the meaning of Section 201.01 of the SEC's Codification of Financial Reporting Policies) by Parent, in the form of a post-effective amendment, issuance of a quarterly earnings report, a Form 10-K, 10-Q or 8-K filing, or any other public issuance which includes the combined sales and net income. Parent shall use its commercially reasonable efforts to make such public

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issuance promptly after such financial information becomes available; provided, however, that Parent shall not be required to prepare such information on other than a calendar-month basis.

(b) Each Shareholder hereby irrevocably waives (a) any and all restrictions on the sale of Company Shares contained in any agreement in favor of such Shareholder or to which such Shareholder is a party relating to Company Shares and any rights such Shareholder may have under any such agreement; (b) any and all preemptive rights, rights of first refusal or first offer and registration rights with respect to any Company Shares or other securities of the Company or any securities issued in exchange therefor; and (c) any and all stock purchase agreements or other agreements pursuant to which securities were purchased from the Company and any and all shareholders agreements or other agreements among shareholders of the Company or between shareholders and the Company.

(c) At Closing, each Shareholder agrees to release and forever discharge the Company, its affiliates, officers, directors and their respective heirs, personal representatives, successors and assigns (including Parent), from any and all claims, damages, losses, liabilities, demands, charges, suits, penalties, actions and causes of action, whether accrued, absolute, contingent, known or unknown, which such Shareholder may now or hereafter have.

6.11 Access to Information. Each party will afford the other party and its accountants, counsel and other representatives reasonable access during normal business hours to the properties, books, records and personnel of the other party during the period prior to the Effective Time to obtain all information concerning the business, including the status of merchandising efforts, leasing activities, distribution center relocation efforts, properties,

results of operations and personnel of such party, as the other party may reasonably request. No information or knowledge obtained in any investigation pursuant to this Section 6.11 will affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Merger.

6.12 Legal Requirements. Each of Parent, Merger Sub and Company will take all reasonable actions necessary or desirable to comply promptly with all legal requirements which may be imposed on them with respect to the consummation of the transactions contemplated by this Agreement (including furnishing all information required in connection with approvals of or filings with any governmental entity, and prompt resolution of any litigation prompted hereby) and will promptly cooperate with and furnish information to any party hereto necessary in connection with any such requirements imposed upon any of them in connection with the consummation of the transactions contemplated by this Agreement.

6.13 Third Party Consents. As soon as practicable following the date hereof and before the Closing, Company shall use its best efforts to obtain all material consents, waivers, estoppels and approvals under any of its agreements, contracts, licenses or leases reasonably requested by Parent or required by this Agreement to be obtained in connection with the consummation of the transactions contemplated hereby.

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6.14 FIRPTA. At or prior to the Closing, Company shall deliver to the IRS a notice that the Company Capital Stock is not a "US Real Property Interest" as defined and in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).

6.15 Notification of Certain Matters. Parent and Merger Sub will give prompt notice to Company, and Company will give prompt notice to Parent, of the occurrence, or failure to occur, of any event, which occurrence or failure to occur would be reasonably likely to cause (a) any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date of this Agreement to the Effective Time; or (b) any material failure of Parent and Merger Sub or Shareholders and Company, as the case may be, or of any officer, director, employee or agent thereof, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement. Notwithstanding the above, the delivery of any notice pursuant to this section will not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

6.16 Tax Matters.

(a) Termination of S Corporation Election. The parties acknowledge and intend that Company's status as an "S" corporation will end on the last day of the S Corporation Period in accordance with the provisions of Section 1362(e)(1)(A) of the Code and Company's status as a "C" corporation will begin immediately after the S Corporation Period in accordance with the provisions of Section 1362(e)(1)(B) of the Code.

(b) Allocation of Income. The parties acknowledge and intend that taxable income shall be allocated between Company's calendar year beginning January 1, 1999 through the Effective Time between its S Corporation Period and C Corporation Period based on the interim closing of the books method in accordance with the provisions of Section 1362(e)(6)(D) of the Code.

(c) Tax Returns. Parent shall cause all income tax returns due from Company for periods beginning January 1, 1999 and ending on the day before Effective Time to be prepared subject to review and consent by Shareholders which consent will not be unreasonably withheld.

(d) Post-Closing Tax Audits. In the event the Company or Shareholders shall incur additional federal or State Income Taxes (including, for all purposes of this Agreement, New York franchise taxes) relating to the Company's income and operations during the S Corporation Period due to a post-Closing tax audit, the Shareholders agree to pay such additional Taxes.

6.17 Best Efforts and Further Assurances. Subject to the respective rights and obligations of Parent, Shareholders and Company under this Agreement, each of the parties to this

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Agreement will use its best efforts to effectuate the Merger and the other transactions contemplated hereby and to fulfill and cause to be fulfilled the conditions to closing under this Agreement. Each party hereto, at the reasonable request of another party hereto, will execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the transactions contemplated hereby.

6.18 Post-Closing Audit.

(a) Promptly following the Effective Time, and in any event not later than 60 days following the Effective Time, Parent shall cause Company to prepare a balance sheet of the Company (the "Closing Balance Sheet") as of the Effective Time. Such financial statements shall be derived from and in accordance with the books and records of the Company and determined in accordance with GAAP applied on a basis consistent with the GAAP principles used in the preparation of the 1998 Financial Statements (as defined in Section 4.7(b)). Such financial statements shall be audited by KPMG and accompanied by KPMG's opinion that such financial statements present fairly in all material respects the financial position and results of operations of the Company.

(b) Promptly following the Effective Time, and in any event not later than 60 days following the Effective Time, Parent shall also cause Company to prepare a statement of Closing Equity ("Statement of Closing Equity") which shall calculate Closing Equity, and KPMG will opine that the Statement of Closing Equity was prepared in accordance with the requirements of this Section 6.18. For purposes of this Agreement, "Closing Equity" shall be defined as the assets of the Company reduced by its liabilities as shown in the Closing Balance Sheet with the following clarifications, adjustments, and exceptions (regardless of whether such clarifications, adjustments, and exceptions are in accordance with GAAP, GAAS, or the Company's past practices):

(i) Inventory shall be based on a physical count of the Inventory conducted by Parent's designee at Parent's expense and rolled forward to the Effective Time and valued in accordance with GAAP and Section 4.13; and

(ii) Deal Expenses within the limitations of Sections 11.1 and 11.2 that have been paid prior to the Effective Date or accrued on the Closing Balance Sheet shall be added back to arrive at Closing Equity.

(iii) To the extent any of the payments to be made pursuant to Section 11.4(i) are accrued before closing, they shall be added back to arrive at Closing Equity.

(iv) The matters described in Section 11.4(ii) together with an estimate of the Company's calendar year 1999 bonus payment (as described in Section 4.21(f) of the Disclosure Schedule), pro-rated as of June 30, 1999, shall be accrued and reduce Closing Equity.

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(v) The amount accrued or reserved in the Closing Balance Sheet for all pending or threatened Proceedings (including those set forth on Section 4.12 of the Disclosure Schedule) shall be \$95,000.00.

(c) Company's CPA shall have the right to observe all steps (including any physical inventory) taken by Parent in connection with the preparation of the Closing Balance Sheet and Statement of Closing Equity. Company's CPA shall have a period of 30 days following his receipt of the Closing Balance Sheet and Statement of Closing Equity to review the same. Promptly following completion of Company's CPA review, Company's CPA shall submit to KPMG a letter regarding his concurrence or disagreement with the accuracy of the Closing Balance Sheet and Statement of Closing Equity. Unless Company's CPA delivers a letter disagreeing with the accuracy within such 30-day period, the Closing Balance Sheet and Statement of Closing Equity shall be binding upon the parties. Following delivery of such letter, if Company's CPA shall disagree as to the computation of any item, Company's CPA and KPMG shall attempt promptly to resolve such disagreement in good faith. If a resolution of such disagreement has not been effected within 15 days (or longer, as mutually agreed by the parties) after delivery of such letter, such disagreement shall be submitted to a nationally recognized independent accounting firm (other than Company's CPA or KPMG) jointly selected by Parent and Shareholders. The determination of such firm with respect to such disagreement and the accuracy of the Closing Balance Sheet and Statement of Closing Equity as a result shall be completed within 120 days of the effective time and shall be final and binding

upon the parties. The fees, costs and expenses of the independent accounting firm selected in the event of a dispute shall be shared equally by Parent and Shareholders.

6.19 Cooperation Following the Closing. Following the Closing, Parent and the Shareholders each shall deliver to the other such further information and documents and shall execute and deliver to the other such further information and documents and shall execute and deliver such further instruments and agreements as the other shall reasonably request in order to consummate or confirm the transactions provided for herein, to accomplish the purpose of this Agreement or to assure to the other the benefits of this Agreement. Without reducing the generality of the foregoing, Shareholders shall permit Parent to use the services of Joseph Burke at a reasonable charge to Parent until the Statement of Closing Equity has been finalized and to make him reasonably available thereafter from time to time to consult on various operational and other post-Closing issues.

#### ARTICLE 7 SURVIVAL AND INDEMNIFICATION

7.1 Indemnification Obligations of the Shareholders. To the extent provided in Section 7.3, the Shareholders agree to indemnify, defend and hold harmless Parent and its subsidiaries and Affiliates (including Sub and the Surviving Corporation), each of their respective officers, directors, employees, agents and representatives and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "Parent Indemnified Parties") from, against and in respect of any and all claims, liabilities, obligations, losses, costs, expenses, penalties, fines and

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judgments (at equity or at law) and damages (consequential or otherwise) whenever arising or incurred (including, without limitation, amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) ("Damages") arising out of or relating to:

(i) any breach or inaccuracy of any representation or warranty made by or with respect to the Company or any Shareholder in this Agreement;

(ii) any breach of any covenant, agreement or undertaking made by or with respect to the Company or any Shareholder in this Agreement;

(iii) any fraud, fraud in the inducement or intentional misrepresentation made by or with respect to the Company or any Shareholder in connection with this Agreement and the transactions contemplated hereby;

(iv) any exercise of dissenters' rights incident to the Merger including, without limitation, the payment of any amounts paid or incurred (including reasonable expenses) with respect to Company Shares held by any dissenter;

(v) attorney's fees incurred by the Company in excess of \$100,000 (as provided in Article 11) or aggregate Deal Expenses (as defined in Article 11) incurred by the Company in excess of \$150,000;

(vi) the Deficit Amount; and

(vii) the aggregate Damages paid, accrued, or incurred after the date of this Agreement which relate to any of the Company's pending or threatened Proceedings as of the Effective Time which are described on Section 4.12 of the Disclosure Schedule (as supplemented at Closing).

The claims, liabilities, obligations, losses, costs, expenses, penalties, fines and damages of the Parent Indemnified Parties described in this Section 7.1 as to which the Parent Indemnified Parties are entitled to indemnification are hereinafter collectively referred to as "Parent Losses."

7.2 Indemnification Obligations of Parent. To the extent provided in Section 7.3, Parent shall indemnify and hold harmless the Shareholders and each of the affiliates, heirs, executors, successors and assigns of such Shareholders (collectively, the "Shareholder Indemnification Parties") from, against and in respect of any and all claims, liabilities, obligations, losses, costs, expenses, penalties, fines and judgments (at equity or at law) and damages (consequential or otherwise) whenever arising or incurred (including, without limitation, amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or relating to:

(a) any breach or inaccuracy of any representation or warranty made by or with respect to Parent in this Agreement;

(b) any breach of any covenant, agreement or undertaking made by or with respect to Parent or Sub in this Agreement; or

(c) any fraud, or fraud in the inducement or intentional misrepresentation made by or with respect to Parent in connection with this Agreement and the transactions contemplated hereby.

The claims, liabilities, obligations, losses, costs, expenses, penalties, fines and damages of the Shareholder Indemnification Parties described in this Section 7.2 as to which the Shareholder Indemnification Parties are entitled to indemnification are hereinafter collectively referred to as "Shareholder Losses."

### 7.3 Limitations on Indemnification.

(a) Except for the specific exceptions contained in this Section 7.3(a), the Parent Indemnified Parties will not be entitled to seek indemnification under Section 7.1(i) (excepting misrepresentations under Sections 4.1 (Corporate Organization; Authorization), 4.2 (No Violation), 4.3 (Enforceability), 4.4 (Capitalization), 4.5 (Subsidiaries; Affiliates; Conflicts of Interest), 4.15 (Environmental Matters), 4.17 (Employee Benefit Plans), 4.19 (Tax Matters), 4.25 (Title to Property and Related Matters), or 4.32 (Pooling)), which is referred to as "Parent Basket Losses," unless and until the aggregate of all Parent Basket Losses incurred by the Parent Indemnified Parties exceeds \$75,000 (the "Shareholder Basket Amount"). In the event that the aggregate of all Parent Basket Losses exceeds the Shareholder Basket Amount, the Parent Indemnified Parties will only be entitled to seek indemnification in respect of Parent Basket Losses in excess of the Shareholder Basket Amount, but in no event will the Shareholders obligations for Parent Losses under Section 7.1 (excepting Section 7.1(iii), Section 7.1(iv) or a misrepresentation under Sections 4.4 (Capitalization), 4.32 (Pooling), or 4.35 (Securities Law Matters)) be greater than Ten Million Dollars (\$10,000,000.00). The Parent Indemnified Parties will not be entitled to seek indemnification under Section 7.1(vii), except to the extent the aggregate of all Parent Losses under Section 7.1(vii) incurred by the Parent Indemnified Parties exceeds \$195,000.00.

(b) The Shareholder Indemnification Parties will not be entitled to seek indemnification under Section 7.2(a) for Shareholder Losses unless and until the aggregate amount of all Shareholder Losses incurred by the Shareholder Indemnification Parties exceeds \$75,000 (the "Parent Basket Amount"). In the event that the aggregate of all Shareholder Losses exceeds the Parent Basket Amount, the Shareholder Indemnification Parties will only be entitled to seek indemnification in respect of Shareholder Losses in excess of the Parent Basket Amount, but in no event will Parent's obligation for Shareholder Losses under Section 7.2 (a) or (b) be greater than Ten Million Dollars (\$10,000,000.00).

(c) The obligation of the Shareholders under Section 7.1 to indemnify, defend and hold harmless Parent Indemnified Parties from, against and in respect of Parent Losses arising out of or relating to Section 7.1 (v), (vi), or (vii) or arising out of or relating to any fraud, fraud in the inducement, breach or inaccuracy of any representation, warranty, covenant, undertaking, or agreement made by or with respect to the Company shall be several in accordance with stock ownership (i.e., each of the five Shareholders shall be liable for twenty percent (20%) of such Damages). Each Shareholder shall indemnify, defend and hold harmless Parent Indemnified Parties from, against and in respect of one hundred percent (100%) of all Parent Losses arising out of or relating to any fraud, fraud in the inducement, breach or inaccuracy of any representation, warranty, covenant, undertaking, or agreement made by or with respect to such Shareholder or any dissenter's rights claimed by such Shareholder, but in no event will any single Shareholder's obligations for such Parent Losses described in this last sentence of Section 7.3(c) be greater than Four Million Dollars (\$4,000,000.00).

### 7.4 Indemnification Procedure.

(a) Promptly after receipt by a Parent Indemnified

Party or a Shareholder Indemnified Party (hereinafter collectively referred to as an "Indemnified Party") of notice from a third party of any complaint or the commencement of any action, proceeding or claim with respect to which such Indemnified Party may be entitled to receive payment from the other party for any Parent Losses or Shareholder Losses (as the case may be and subject to the limitation on Parent Losses and Shareholder Losses in Section 7.3), such Indemnified Party shall notify Parent or the Shareholders (through the Shareholder Representative), whoever is the appropriate indemnifying party hereunder (the "Indemnifying Party"), of the commencement of such action, proceeding or claim; provided, however, that the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party from liability for such claim arising otherwise than under this Agreement and such failure to so notify the Indemnifying Party shall relieve the Indemnifying Party from liability under this Agreement with respect to such matter only if, and only to the extent that, such failure to notify the Indemnifying Party results in the forfeiture by the Indemnifying Party of rights and defenses otherwise available to the Indemnifying Party with respect to such matter. The Indemnifying Party shall have the right, upon written notice delivered to the Indemnified Party within twenty (20) days thereafter, to assume the defense of such matter, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of the fees and disbursements of such counsel. In the event, however, that the Indemnifying Party declines or fails to assume the defense of the matter or to employ counsel reasonably satisfactory to the Indemnified Party, in either case within such twenty (20) day period, then such Indemnified Party may employ counsel to represent or defend it in any such action or proceeding and the Indemnifying Party shall pay the reasonable fees and disbursements of such counsel as incurred; provided, however, that the Indemnifying Party shall not be required to pay the fees and disbursements of more than one counsel for all Indemnified Parties in any jurisdiction in any single action or proceeding. In any action or proceeding with respect to which indemnification is being sought hereunder, the Indemnified Party or the Indemnifying Party, whichever is not assuming the defense of such action, shall have the right to participate in such matter and to retain its own counsel at such party's own expense. The

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Indemnifying Party or the Indemnified Party, as the case may be, shall at all times use reasonable efforts to keep the Indemnifying Party or the Indemnified Party, as the case may be, reasonably apprised of the status of the defense of any action the defense of which they are maintaining and to cooperate in good faith with each other with respect to the defense of any such action.

(b) No Indemnified Party may settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder without the prior written consent of the Indemnifying Party, unless (i) the Indemnifying Party fails to assume and maintain the defense of such claim pursuant to Section 7.4(a); or (ii) such settlement, compromise or consent includes an unconditional release of the Indemnifying Party from all liability arising out of such claim. An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim and does not contain any equitable order, judgment or term which in any manner affects, restrains or interferes with the business of the Indemnified Party or any of the Indemnified Party's respective affiliates.

(c) In the event an Indemnified Party shall claim a right to payment (or, a credit towards the Shareholders Basket Amount or Parent Basket Amount) pursuant to this Agreement, such Indemnified Party shall send written notice of such claim to the appropriate Indemnifying Party. Such notice shall specify the basis for such claim. As promptly as possible after the Indemnified Party has given such notice, such Indemnified Party and the appropriate Indemnifying Party shall establish the merits and amount of such claim (by mutual agreement, litigation, arbitration or otherwise) and, within five business days of the final determination of the merits and amount of such claim, the Indemnifying Party shall pay to the Indemnified Party immediately available funds (or, if applicable, shall provide notice to the escrow agent regarding disbursement of the appropriate portion of the escrow fund) in an amount equal to such claim as determined hereunder (or shall record an appropriate credit against the Shareholder Basket Amount or Parent Basket Amount).

7.5 Survival; Claims Period. All representations and warranties contained in this Agreement or any certificate delivered pursuant to Sections 8.1(d)(i) and 9.1(c)(i) hereof shall survive the Effective Time for the applicable Claims Period specified in this Section 7.5, and shall not be deemed waived or otherwise affected by any investigation made or any knowledge acquired with respect thereto. The covenants and agreements contained in this Agreement

shall also survive the Effective Time and shall continue until the expiration of the applicable Claims Period specified in this Section 7.5. For purposes of this Agreement, a "Claims Period" shall be the period during which a claim for indemnification may be asserted under this Agreement by an Indemnified Party. The Claims Periods under this Agreement shall commence on the date of this Agreement and shall terminate as follows:

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(a) with respect to Parent Losses arising under Section 7.1(i) with respect to Sections 4.7 (Financial Statements), 4.10 (Absence of Certain Changes), and 4.26 (Accounts and Notes Receivable) or with respect to Section 7.1(vi), the Claims Period shall terminate on the date which is thirty (30) days following the final determination of the Closing Balance Sheet;

(b) with respect to any other Parent Losses arising under Section 7.1(i) or any Parent Losses arising under Section 7.1(ii), (iii), (iv) or (v), the Claims Period shall terminate one (1) year following the Closing Date;

(c) with respect to Parent Losses arising under Sections 7.1(vii), the Claims Period shall continue indefinitely, except as limited by law (including by applicable statutes of limitation);

(d) with respect to Shareholder Losses arising under Section 7.2, the Claims Period shall terminate one (1) years following the Closing date;

Notwithstanding the foregoing, if, prior to the close of business on the last day of the applicable Claims Period, an Indemnifying Party shall have been properly notified as provided hereunder of a claim for indemnity hereunder and such claim shall not have been finally resolved or disposed of at such date, such claim shall continue to survive and shall remain a basis for indemnity hereunder until such claim is finally resolved or disposed of in accordance with the terms hereof.

7.6 Recovery. Parent may recover Parent Losses in accordance with the provisions of the Escrow Agreement; provided, however, that Parent's ability to recover Parent Losses in accordance with the Escrow Agreement shall not in any way be construed to limit any remedy Parent may have against the Shareholders under this Article 7.

#### ARTICLE 8 CONDITIONS PRECEDENT TO OBLIGATIONS OF PARENT AND SUB

8.1 Conditions Precedent. Parent's and Sub's obligation to consummate the Merger and the transactions contemplated by this Agreement is subject to the fulfillment on or before the Closing Date of each of the following conditions:

(a) Representations, Warranties and Covenants. The representations and warranties of the Shareholders set forth herein shall be accurate in all material respects on and as of the Closing Date as if made on and as of such date (or any date, including the date of this Agreement, at which a representation or warranty is expressly made), and the Company and the Shareholders shall have complied in all material respects with or performed in all material respects all agreements, covenants and conditions on their part to be performed or complied with on or prior to the Closing Date.

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(b) Legal Actions. No suit, action or other proceeding by any third party shall be pending before any court or governmental agency seeking to restrain or prohibit, or to obtain damages or other relief in connection with, this Agreement or the consummation of the transactions contemplated hereby or which is likely to materially adversely affect the value of the assets or business of the Company (taken as a whole).

(c) Consents. All consents, authorizations, orders and approvals of (or filings or registrations with) any governmental commission, board or other regulatory body required in connection with the execution, delivery and performance of this Agreement by the Company shall have been obtained or made, except for filing of the Certificate of Merger and any other documents required to be filed after the Effective Time and except where the

failure to have obtained or made any such consent, authorization, order approval, filing or registration would not have a material adverse effect on the business of Parent and the Company following the Effective Time. Parent shall also have received consents to assignment of all Company Contracts (including leases for the Leased Real Estate) or written waivers of the provisions of any Company Contracts (including leases for the Leased Real Estate) requiring the consents of third parties.

(d) Deliveries. The Company and/or Shareholders shall have delivered to Parent:

(i) A certificate executed by the Shareholders certifying to the accuracy on the Closing Date of their respective representations and warranties set forth in Article 4;

(ii) A certificate by the Secretary of the Company as to the Board of Directors and Shareholders of the Company having taken all actions necessary to authorize the execution, delivery and performance of this Agreement by the Company and the consummation of the transactions contemplated thereby;

(iii) The minute books, stock transfer books (containing canceled stock certificates representing all transfers of its capital stock prior to the Closing Date) and corporate seal of the Company which are in the Company's possession;

(iv) The opinion of counsel for the Company and the Shareholders in the form of Exhibit C hereto; and

(v) Such other documents and items as are contemplated by this Agreement or as Parent may reasonably request.

(e) Antitrust Filing. The waiting period required in connection with the Antitrust Filing, if any, shall have expired or been terminated.

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(f) Pooling Opinion. KPMG shall have delivered to Parent a letter dated as of the Closing Date to the effect that, based upon discussions with officials responsible for financial and accounting matters, and information to be furnished to KPMG through such date, KPMG concurs with management's conclusion that, as of such date, no conditions exist which would preclude Parent from accounting for the merger with the Company as a pooling of interests under Opinion 16 of the Accounting Principles Board and applicable SEC rules and regulations. In addition, Company's CPA shall deliver to Parent, and the Company and KPMG, an opinion letter dated as of the Closing Date in customary form satisfactory to Parent that, based upon inquiries and their examination of the financial statements of the Company, stating that the accounting for the Merger as a pooling of interest under Opinion 16 of the Accounting Principles Board and applicable SEC rules and regulations is appropriate if the Merger is closed and consummated in accordance with the terms of this Agreement.

(g) Stock Price of Parent Common Stock. The Average Closing Price shall not be less than \$25.00 per share.

(h) Escrow Agreement. The Shareholder Representative shall have executed and delivered the Escrow Agreement, substantially in the form attached hereto as Exhibit B (the "Escrow Agreement"), pursuant to which there shall be deposited with the Escrow Agent named therein on the Closing Date the Escrow Shares to secure the Shareholders' obligations under this Agreement.

(i) Non-Competition Agreements. The Shareholders shall have executed and delivered to Parent Non-Competition Agreements substantially in the form attached hereto as Exhibit D ("Non-Competition Agreements").

(j) No Material Adverse Change. There shall not have occurred after the date hereof any material adverse change in the financial condition, properties, business, or results of operations of the Company; provided, however, any material adverse change that relates primarily to (i) general economic conditions (including those in the United States or any region of the United States); (ii) general political conditions (including those in the United States or any region of the United States); (iii) the announcement of the transactions contemplated hereby; or (iv) any combination of the foregoing, shall not be considered a material adverse change.

(k) Related Party Debt. Each Shareholder or its Affiliate shall have paid in full all amounts of any kind owed by such

Shareholder or its Affiliate to the Company, or such amount shall have been offset on a dollar-for-dollar basis against any indebtedness for borrowed money owed by the Company to such Shareholder or its Affiliate.

(l) Dissenting Shares. No holders of Company Shares shall have the right to elect to exercise dissenters' rights pursuant to New York Law.

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(m) Shareholder Approval. This Agreement, the Certificate of Merger, and the Merger shall have been duly approved by the shareholders of the Company in accordance with all applicable laws, the Certificate of Incorporation and Bylaws of the Company and otherwise.

(n) Corporate Documents. The Certificate of Merger relating to the Merger and the related officers' certificates required by New York Law shall have been executed by the Company and delivered to Parent for filing.

(o) Registration Rights Agreement. The Shareholders shall have executed and delivered to Parent the Registration Rights Agreement substantially in the form attached hereto as Exhibit A.

(p) Termination of Certain Agreements. The agreements described on Schedule 8.1(p) shall have been terminated by all parties thereto or assigned to affiliates of Shareholders without any obligation on the part of the Company, in each case in a form and upon such terms as shall be reasonably acceptable to Parent.

8.2 Waiver. The Parent and the Sub shall have the right to waive the foregoing conditions, or any of them, wholly or in part; provided, however, that no such waiver shall be deemed to have occurred unless the same is set out in writing and executed by the Parent and the Sub.

ARTICLE 9  
CONDITIONS PRECEDENT TO OBLIGATIONS  
OF THE SHAREHOLDERS AND COMPANY

9.1 Conditions Precedent. The obligation of the Shareholders and Company to consummate the Merger and the transactions contemplated by this Agreement is subject to the fulfillment, on or before the Closing Date, of each of the following conditions:

(a) Representations, Warranties and Covenants. The representations and warranties made by Parent and Sub herein shall be accurate in all material respects on and as of the Closing Date to the same extent as if made on and as of such date, and Parent and Sub shall have complied in all material respects with or performed in all material respects all agreements, covenants and conditions on their part to be performed or complied with on or prior to the Closing Date.

(b) Legal Actions. No suit, action or other proceeding by any third party shall be pending before any court or governmental agency seeking to restrain or prohibit, or to obtain damages or other relief in connection with, this Agreement or the consummation of the transactions contemplated hereby or which is likely to have a material adverse effect on the value of the assets or business of the Parent (taken as a whole).

(c) Deliveries. Parent shall have delivered to the Company:

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(i) A certificate executed by Parent and Sub certifying to the accuracy on the Closing Date of Parent's and Sub's representations and warranties set forth in Article 5;

(ii) A certificate by the Secretary or any Assistant Secretary of Parent and Sub as to the due adoption by the Board of Directors of Parent and the Board of Directors and shareholders of Sub of the required corporate resolutions authorizing the execution, delivery and performance of this Agreement by Parent and Sub and the consummation of the transactions contemplated thereby;

(iii) Such other documents and items as are contemplated by this Agreement or as the Company may reasonably request;

(iv) A one year employment agreement in the form of Exhibit E between Company and Louis B. Tehan shall be executed and delivered.; and

(v) The opinion of counsel for Parent and Sub in the form of Exhibit E.

(d) Antitrust Filing. The waiting period required in connection with the Antitrust Filing, if any, shall have expired or been terminated.

(e) Stock Price of Parent Common Stock. The Average Closing Price shall not exceed \$51.00.

(f) Registration Rights Agreement. Parent shall have executed and delivered to Shareholders the Registration Rights Agreement substantially in the form attached hereto as Exhibit A.

(g) No Material Adverse Change. There shall not have occurred after the date hereof any material adverse change in the financial condition, business or results of operations of Parent (taken as a whole together with its subsidiaries); provided, however, any material adverse change that relates primarily to (i) general economic conditions (including those in the United States, any region of the United States, or any nation in which Parent conducts a material transactions); (ii) general political conditions (including those in the United States, any region of the United States, or any nation in which Parent conducts a material transactions); (iii) general stock market conditions (including those that adversely effect one or more publicly traded value retailers in addition to Parent); (iv) the announcement of the transactions contemplated hereby; or (v) any combination of the foregoing, shall not be considered a material adverse change.

9.2 Waiver. The Company and Shareholders shall have the right to waive the foregoing conditions, or any of them, wholly or in part; provided, however, that no such waiver shall be deemed to have occurred unless the same is set out in writing and executed by the Company and

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Shareholders. Any waiver made by the Company and Shareholders hereunder shall also constitute a waiver with respect to any rights or remedies that the Company or Shareholders may otherwise have against Parent in respect of or relating to the specific conditions waived.

#### ARTICLE 10 TERMINATION

10.1 Termination. This Agreement may be terminated at any time at or prior to the Closing (the "Termination Date"):

(a) in writing by mutual consent of Parent and the Company;

(b) by written notice from the Company to Parent if (i) Parent or Sub shall breach or fail to perform in any material respect any of its agreements contained herein required to be performed by it on or prior to the Closing Date or (ii) any of the representations and warranties of Parent and Sub contained herein shall be inaccurate in any material respect, which breach, failure or inaccuracy is not cured within ten (10) days after the Company has notified Parent of its intent to terminate this Agreement pursuant to this subparagraph (b); provided that if any such breach, failure or inaccuracy is not reasonably capable of cure within such 10-day period and Parent is using its good faith efforts to effect such cure at the earliest practicable time, the Company shall not be permitted to terminate this Agreement pursuant to this subparagraph (b) unless such breach, failure or inaccuracy is not cured within thirty (30) days after the Company has notified Parent of its intent to terminate this Agreement pursuant to this subparagraph (b);

(c) by written notice from Parent to the Company, if (i) the Company shall breach or fail to perform in any material respect any of its agreements contained herein required to be performed by it on or prior to the Closing Date; or (ii) any of the representations and warranties of the Company contained herein shall be inaccurate in any material respect, which breach, failure or inaccuracy is not cured within ten (10) days after Parent has notified the Company of its intent to terminate this Agreement pursuant to this subparagraph (c); provided that if any such breach, failure or inaccuracy is not reasonably capable of cure within such 10-day period and Company is using its good faith efforts to effect such cure at the earliest practicable time, the



Company shall not be permitted to terminate this Agreement pursuant to this subparagraph (c) unless such breach, failure or inaccuracy is not cured within thirty (30) days after Parent has notified the Company of its intent to terminate this Agreement pursuant to this subparagraph (c);

(d) by written notice by Parent to the Company, if the Closing has not occurred by August 31, 1999, for any reason other than delay or nonperformance by Parent or Sub.

(e) by written notice by Company to the Parent, if the Closing has not occurred by August 31, 1999, for any reason other than delay or nonperformance by Company or any Shareholder.

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10.2 Effect of Termination. Each party's right of termination under Section 10.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. In the event of termination of this Agreement pursuant to this Article 10, all further obligations of the parties will terminate for acts or omissions occurring after the Termination Date, except for obligations under Article 7 for any breach occurring on or before the Termination Date described in the next sentence, Article 11, Article 12 and this Section 10.2, all of which shall survive the Termination Date. Notwithstanding the foregoing, nothing contained herein shall relieve any party from liability for (i) such party's breach of this Agreement occurring on or before the Termination Date, or (ii) such party's failure to comply with an obligation hereunder on or before the Termination Date which results in a failure of one or more conditions to the terminating party's obligations hereunder.

#### ARTICLE 11 CERTAIN EXPENSES

Except as set forth in this Article 11 or as otherwise provided herein, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, whether or not the Merger is consummated.

11.1 Deal Expenses. "Deal Expenses" shall mean all out-of-pocket expenses of the Company payable to accountants, lawyers, and consultants relating to the negotiation, execution, and closing of this Agreement; provided, that Shareholder's agree that expenses which constitute legal fees shall not exceed \$100,000.00 and the aggregate of all Deal Expenses including legal fees but excluding the Antitrust Filing Fee shall not exceed \$150,000. The term "Deal Expense" shall exclude expenses payable to Company's CPA for work to be conducted on Company's behalf after the Closing Date.

11.2 Deal Expenses Paid in Event of Closing. In the event Closing occurs, Parent shall cause the Company to pay all Deal Expenses incurred through the Closing; and Shareholders shall pay for all Deal Expenses incurred after the Closing.

11.3 Deal Expenses Paid in Event of Termination. In the event the transaction contemplated hereby is terminated, Parent shall be responsible for only those Deal Expenses which constitute the Antitrust Filing fee; provided, however, in the event the transaction is terminated pursuant to Section 10.1(c), Company shall pay or reimburse Parent for the Antitrust Filing Fee.

11.4 Severance, Bonus Payments; Accrued Vacation. In the event Closing occurs, Parent shall cause Company (i) to pay an aggregate of up to \$142,200 in severance and bonus payments to Company non-Shareholder employees reasonably designated by Shareholders (subject to Parent's right to veto such payments if, in the opinion of KPMG, any such payments jeopardize treatment of the Merger as a pooling of interests) and (ii) to compensate Company non-Shareholder employees who are terminated following Closing for unused vacation days which would have accrued to such employees as of a date that is 60 days after the Closing Date.

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#### ARTICLE 12 MISCELLANEOUS

12.1 Benefits and Burdens: Assignment.

(a) Upon the execution of this Agreement by Shareholders, Parent, Sub, and the Company, this Agreement shall become a binding and enforceable agreement with respect to Shareholders, Parent, Sub and the Company.

(b) This Agreement shall inure to the benefit of and shall be binding upon the Shareholders, Company, Sub and Parent, and each of their respective personal representatives, successors, heirs and permitted assigns. No party to this Agreement may assign its rights or obligations hereunder without the prior written consent of each of the other parties hereto; provided however, that this Agreement may be assigned by Parent to a corporation, all of whose issued and outstanding capital stock is owned directly or indirectly by Parent, but in such event Parent shall not be released from its obligations hereunder.

(c) Nothing contained in this Agreement or in any instrument or document executed by any party in connection with the transactions contemplated hereby shall create any rights in, or be deemed to have been executed for the benefit of, any person or entity that is not a party hereto, a successor or permitted assign of such a party or a person or entity expressly entitled to indemnification hereunder

12.2 Amendment. This Agreement may be amended by the Company, Sub and Parent and Shareholders, by or pursuant to action taken by their respective Boards of Directors and the Shareholders at any time; provided however that no amendment shall be made which by law requires further approval by Shareholders without such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

12.3 Notices. All notices, communications and deliveries hereunder shall be made in writing signed by or on behalf of the party making the same, shall specify the Section hereunder pursuant to which it is given or being made, and shall be delivered personally or by telecopy transmission or sent by registered or certified mail (return receipt requested) or by any national overnight courier service (with postage and other fees prepaid) as follows:

If to Parent or, after the Closing, the Company:	With a required copy to:
Dollar Tree Stores, Inc. 500 Volvo Parkway Chesapeake, Virginia 23320 Attention: Mr. H. Ray Compton	Hofheimer Nusbaum, P.C. 999 Waterside Drive, Suite 1700 P. O. Box 3460 Norfolk, Virginia 23514 Attention: William A. Old, Jr., Esquire Telecopier: (757) 629-0660

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If, prior to Closing, to the Company:	With a required copy to:
Tehan's Merchandising, Inc. t/a Only \$One 4619 Commercial Drive New Hartford, New York 13413 Attention: Mr. Richard J. Tehan Telecopier: (315)724-2931	Steates Rimmell Steates & Dziekan 4 Oxford Crossing, Suite 164 New Hartford, NY 13413 Attention: Robert E. Rimmell, Esq. Telecopier: (315)724-2931

If to the Shareholders, at the addresses shown on Section 4.4(a) of the Disclosure Schedule with a required copy to:

Steates Rimmell Steates & Dziekan  
4 Oxford Crossing, Suite 164  
New Hartford, NY 13413  
Attention: Robert E. Rimmell, Esq.  
Telecopier: (315) 724-2931

or to such other address or to such other person or persons designated in writing by such party or counsel, as the case may be. Any such notice, communication or delivery shall be deemed given or made (a) on the date of delivery if delivered in person; (b) on the date after delivery to a national overnight courier service; (c) upon transmission by facsimile if receipt is confirmed by telephone; or (d) on the fifth (5th) business day after it is mailed by registered or certified mail.

12.4 Entire Agreement. Those certain letters dated May 6, 1999 by and between Parent and Company relating to confidentiality and the terms of a possible transaction are hereby terminated and shall be deemed void ab initio; provided however upon termination of this Agreement pursuant to Article 10 hereof, the letter relating to confidentiality shall be deemed revived and in full force and effect as of such termination; however, no action by Parent

permitted under this Agreement prior to termination of this Agreement pursuant to Article 10 hereof shall be deemed to be a violation of such revived letter. This Agreement embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties. The parties make no representations or warranties to each other, except as contained in this Agreement, and any and all prior representations, warranties, assurances and promises made by any party or its representatives, whether verbally or in writing, are deemed to have been merged into this Agreement, it being intended that no such prior representations, warranties, assurances and promises shall survive the execution and delivery of this Agreement.

12.5 Headings. The section headings in this Agreement are intended solely for convenience and shall be given no effect in the construction and interpretation hereof.

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12.6 Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation. The parties intend that each representation, warranty, and covenant contained herein shall have independent significance. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. If any party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty, or covenant.

12.7 Incorporation of Exhibits and Schedules. The exhibits and schedules identified in this Agreement, including the Disclosure Schedule (and any certificates or documents delivered at Closing pursuant to Sections 8.1 and 9.1), are incorporated herein by reference and made a part hereof. The term "Agreement" shall include all such exhibits, schedules, certificates, and writings. The inclusion of any item in the Disclosure Schedule is not evidence of the materiality or immateriality of such item for the purposes of this Agreement.

12.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and, when signed by all of the parties hereto, shall become legally binding on such parties effective as of the date set forth at the beginning of this Agreement.

12.9 Governing Law. This Agreement shall be governed by and interpreted under the laws of the Commonwealth of Virginia applicable to contracts made and to be performed entirely within such Commonwealth and without giving effect to the choice of law principles of such Commonwealth.

12.10 Enforcement; Jurisdiction; Waiver of Jury Trial. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, such remedy being in addition to any other remedy to which any party is entitled at law or in equity. Each party hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Eastern District of Virginia or any court of the Commonwealth of Virginia located in the City of Norfolk in any action, suit or proceeding arising in connection with this Agreement and agrees that any such action, suit or proceeding shall be brought only in such court (and irrevocably waives any objection based on forum non conveniens

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or any other objection to venue therein). Parent and the Company hereby waive any right to a trial by jury in connection with any such action, suit or proceeding.

12.11 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

12.12 Time. Time is of the essence under this Agreement.

12.13 Knowledge. The phrase "to the knowledge of the Company" or its equivalent as used herein shall mean to the knowledge of the Company, its directors and officers, or any of the Shareholders after appropriate inquiry.

12.14 Statutes. Any reference herein to any federal, state or local statute shall include all amendments to such statute through the date of this Agreement or the Effective Time, as applicable.

12.15 Specific Performance and Other Remedies. The parties hereto each acknowledge that the rights of each party to consummate the transactions contemplated hereby are special, unique and of extraordinary character, and that, in the event that any party violates or fails or refuses to perform any covenant or agreement made by it herein, the non-breaching party may be without an adequate remedy at law. The parties each agree, therefore, that in the event that either party violates or fails or refuses to perform any covenant or agreement made by such party herein, the non-breaching party or parties may, subject to the terms of this Agreement and in addition to any remedies at law for damages or other relief, institute and prosecute an action in any court of competent jurisdiction to enforce specific performance of such covenant or agreement or seek any other equitable relief. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

[The remainder of this page is left intentionally blank.]

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

COMPANY: TEHAN'S MERCHANDISING, INC. [SEAL]

By: /s/ Richard J. Tehan  
\_\_\_\_\_  
Richard J. Tehan  
President

PARENT: DOLLAR TREE STORES, INC. [SEAL]

By: /s/ Macon F. Brock, Jr.  
\_\_\_\_\_  
Macon F. Brock, Jr.  
President and Chief Executive Officer

SUB: DOLLAR TREE NEW YORK, INC. [SEAL]

By: /s/ Frederick C. Coble  
\_\_\_\_\_  
Frederick C. Coble  
Senior Vice President - Chief Financial Officer

SHAREHOLDERS:

/s/ Richard J. Tehan  
\_\_\_\_\_  
RICHARD J. TEHAN [SEAL]

/s/ Robert J. Tehan  
\_\_\_\_\_  
ROBERT J. TEHAN [SEAL]

/s/ Steven A. Tehan  
\_\_\_\_\_  
STEVEN A. TEHAN [SEAL]

/s/ Basil L. Tehan

[SEAL]

\_\_\_\_\_  
BASIL L. TEHAN

/s/ Frederick J. Tehan

[SEAL]

\_\_\_\_\_  
FREDERICK J. TEHAN

State of (Commonwealth of) New York, City/County of Oneida, to-wit:

The foregoing instrument was acknowledged before me this 15th day of June, 1999, by Richard J. Tehan, President of Tehan's Merchandising, Inc., on behalf of the corporation.

/s/ Carl S. Dziekan  
-----  
Notary Public  
My commission expires: May 5, 2000

State of (Commonwealth of) Virginia, City/County of Chesapeake, to-wit:

The foregoing instrument was acknowledged before me this 15th day of June, 1999, by Macon F. Brock, President and chief Executive Officer of Dollar Tree Stores, Inc., on behalf of the corporation.

/s/ Brenda S. Cox  
-----  
Notary Public  
My commission expires: August 31, 1999

State of (Commonwealth of) Virginia, City/County of Chesapeake, to-wit:

The foregoing instrument was acknowledged before me this 15th day of June, 1999, by Frederick C. Coble, Senior Vice-President and Chief Financial Officer of Dollar Tree New York, Inc., on behalf of the corporation.

/s/ Brenda S. Cox  
-----  
Notary Public  
My commission expires: August 31, 1999

State of (Commonwealth of) New York, City/County of Oneida, to-wit:

The foregoing instrument was acknowledged before me this 15th day of June, 1999 by Richard J. Tehan.

/s/ Carl S. Dziekan  
-----  
Notary Public  
My commission expires: May 5, 2000

State of (Commonwealth of) New York, City/County of Oneida, to-wit:

The foregoing instrument was acknowledged before me this 15th day of June, 1999, by Robert J. Tehan.

/s/ Carl S. Dziekan  
-----  
Notary Public  
My commission expires: May 5, 2000

State of (Commonwealth of) New York, City/County of Oneida, to-wit:

The foregoing instrument was acknowledged before me this 15th day of June, 1999, by Steven A. Tehan.

/s/ Carl S. Dziekan  
-----  
Notary Public  
My commission expires: May 5, 2000

State of (Commonwealth of) New York, City/County of Oneida, to-wit:

The foregoing instrument was acknowledged before me this 15th day of June, 1999, by Basil L. Tehan.

/s/ Carl S. Dziekan  
-----  
Notary Public  
My commission expires: May 5, 2000

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State of (Commonwealth of) New York, City/County of Oneida, to-wit:

The foregoing instrument was acknowledged before me this 15th day of June, 1999, by Frederick J. Tehan.

/s/ Carl S. Dziekan  
-----  
Notary Public  
My commission expires: May 5, 2000

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CREDIT AGREEMENT

Dated as of June 2, 1999

among

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually, except as  
expressly stated herein,  
but solely as the Owner Trustee  
under the DTSD Realty Trust 1999-1,  
as the Borrower,

and

FIRST UNION NATIONAL BANK,  
as the Lender

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EXHIBITS

Exhibit A-1	Form of Note
Exhibit B	Form of Assignment and Acceptance

CREDIT AGREEMENT

THIS CREDIT AGREEMENT, dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Agreement") is among FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, except as expressly stated herein, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1 (the "Owner Trustee" or the "Borrower") and FIRST UNION NATIONAL BANK, a national banking association, as lender ("Bank").

The parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

1.1 Definitions.

For purposes of this Agreement, capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in Appendix A to that certain Participation Agreement dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof, the "Participation Agreement") among Dollar Tree Distribution, Inc., as Lessee and as Construction Agent, the various parties thereto from time to time, as the Guarantors, the Borrower, and First Union National Bank, as Lender and Holder. Unless otherwise indicated, references in this Agreement to articles, sections, paragraphs, clauses, appendices, schedules and exhibits are to the same contained in this Agreement.

1.2 Interpretation.

The rules of usage set forth in Appendix A to the Participation Agreement shall apply to this Agreement.

SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1 Commitments.

(a) Subject to the terms and conditions hereof, the Bank agrees to make Loans to the Borrower from time to time during the Commitment Period in an amount up to the Commitment for the purpose of enabling the Borrower to purchase the Properties and to pay Property Acquisition Costs, Property Costs and Transaction Expenses. Any prepayments of the Loans, whether mandatory or at the Borrower's election, shall not be subject to reborrowing except as set forth in Section 5.2(d) of the Participation Agreement.

(b) The Loans may from time to time be (i) Eurodollar Loans, (ii) ABR Loans, or (iii) a combination thereof, as determined by the Borrower and notified to the Bank in accordance with Sections 2.3 and 2.7. In the event the Borrower fails to provide notice pursuant to Section 2.3, the Loan shall be an ABR Loan. Further, any Loans by the Bank on a given date in an aggregate amount less than \$100,000 shall be ABR Loans, unless the remaining Available Commitment



is less than \$100,000, in which case, the Borrower may elect a Eurodollar Loan for such remaining amount.

## 2.2 Notes.

The Loans shall be evidenced by promissory notes of the Borrower, substantially in the form of Exhibit A (the "Notes"), with appropriate insertions as to payee and date. The Bank is hereby authorized to record the date, Type and amount of each Loan made, each continuation thereof, each conversion of all or a portion thereof to another Type, and the date and amount of each payment or prepayment of principal thereof on the schedule annexed to and constituting a part of any Note, and any such recordation shall constitute prima facie evidence of the accuracy of the information so recorded, provided, that the failure to make any such recordation or any error in such recordation shall not affect the Borrower's obligations hereunder or under such Note. Each Note shall (i) be dated the Initial Closing Date, (ii) be stated to mature on the Maturity Date and (iii) provide for the payment of principal in accordance with Section 2.6(d) and the payment of interest in accordance with Section 2.8.

## 2.3 Procedure for Borrowing.

(a) The Borrower may borrow under the Commitments during the Commitment Period on any Business Day that an Advance may be requested pursuant to the terms of Section 5.2 of the Participation Agreement, provided, that the Borrower shall give the Bank irrevocable notice (which must be received by the Bank prior to 11:00 a.m., Charlotte, North Carolina time, at least two (2) Business Days prior to the requested Borrowing Date for Eurodollar Loans (for ABR Loans, such notice may be given on the same Business Day as the requested Borrowing Date, so long as such notice is received prior to 11:00 a.m. Charlotte, North Carolina time on such Business Day) specifying (i) the amount to be borrowed (which on any date shall not be in excess of the then Available Commitments), (ii) the requested Borrowing Date, (iii) whether the borrowing is to be of Eurodollar Loans, ABR Loans or a combination thereof, (iv) if the borrowing is to be a combination of Eurodollar Loans and ABR Loans, the respective amounts of each Type of Loan and (v) the Interest Period applicable to each Eurodollar Loan. Pursuant to the terms of the Participation Agreement, the Borrower shall be deemed to have delivered such notice upon the delivery of a notice by the Construction Agent or the Lessee containing such required information. Upon receipt of any such notice from the Borrower, the Bank shall make such borrowing available for the account of the Borrower at the office of the Bank specified in Section 9.2 prior to 11:00 a.m., Charlotte, North Carolina time, on the Borrowing Date requested by the Borrower in funds immediately available. No amount of any Loan which is repaid or prepaid by the Borrower may be reborrowed hereunder, except as set forth in Section 5.2(d) of the Participation Agreement.

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(b) Interest accruing on each Loan during the Construction Period with respect to any Property shall, subject to the limitations set forth in Section 5.1(b) of the Participation Agreement be added to the principal amount of such Loan on the relevant Scheduled Interest Payment Date. On each such Scheduled Interest Payment Date, the Loan Property Cost and Construction Loan Property Cost shall be increased by the amount of interest added to the Loans.

## 2.4 [Intentionally Left Blank].

## 2.5 Termination or Reduction of Commitments.

(a) The Borrower shall have the right, upon not less than three (3) Business Days' written notice to the Bank, to terminate the Commitments or, from time to time, to reduce the amount of the Commitments, provided, that (i) after giving effect to such reduction, the aggregate outstanding principal amount of the Loans shall not exceed the aggregate Commitments and (ii) such notice shall be accompanied by a certificate of the Construction Agent stating that the amount equal to ninety-seven percent (97%) of aggregate Budgeted Total Property Costs as of the date of such reduction does not exceed the aggregate amount of Available Commitments as of such date after giving effect to such reduction. Any such reduction (A) shall be in an amount equal to the lesser of (1) \$1,000,000 (or an even multiple thereof) or (2) the remaining Available Commitments and (B) shall reduce permanently the Commitments then in effect.

(b) The Commitments respecting any particular Property shall automatically be reduced to zero (0) upon the occurrence of the Rent Commencement Date respecting such Property. On any date on which the Commitments shall automatically be reduced to zero (0) pursuant to Section 6, the Borrower shall prepay all outstanding Loans, together with accrued unpaid interest thereon and all other amounts owing thereunder.

## 2.6 Prepayments and Payments.

(a) Subject to Sections 11.2(e), 11.3 and 11.4 of the Participation Agreement, the Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon at least three (3)

Business Days' irrevocable notice to the Bank, specifying the date and amount of prepayment and whether the prepayment is of Eurodollar Loans, ABR Loans or a combination thereof, and, if a combination thereof, the amount allocable to each. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein. Amounts prepaid may not be reborrowed, and shall reduce the Commitments and the Available Commitments, except in each case as set forth in Section 5.2(d) of the Participation Agreement.

(b) If on any date the Lessor shall receive any payment in respect of (i) any Casualty, Condemnation or Environmental Violation pursuant to Sections 15.1(a) or 15.1(g) or Article XVI of the Lease (excluding any payments in respect thereof which are payable to the Lessee in accordance with the Lease), or (ii) the Termination Value of any Property in connection with the delivery of a Termination Notice pursuant to Article XVI of the Lease, or (iii) the Termination

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Value of any Property in connection with the exercise of the Purchase Option under Article XX of the Lease or the exercise of the option of the Lessor to transfer the Properties to the Lessee pursuant to Section 20.3 of the Lease, or (iv) any payment required to be made or elected to be made by the Construction Agent to the Lessor pursuant to the terms of the Agency Agreement, then in each case, the Borrower shall pay such amounts to the Bank.

(c) Each prepayment of the Loans pursuant to Section 2.6(a) shall be allocated to reduce the respective Loan Property Costs of all Properties pro rata according to the Loan Property Costs of such Properties immediately before giving effect to such prepayment. Each prepayment of the Loans pursuant to Section 2.6(b) shall be allocated to reduce the Loan Property Cost of the Property or Properties subject to the respective Casualty, Condemnation, Environmental Violation, termination, purchase, transfer or other circumstance giving rise to such prepayment. Any amounts applied to reduce the Loan Property Cost of any Construction Period Property pursuant to this paragraph (c) shall also be applied to reduce the Construction Loan Property Cost of such Property until such Construction Loan Property Cost has been reduced to zero (0).

(d) The outstanding principal balance of the Loans and all other amounts then due and owing under this Agreement or otherwise with respect to the Loans shall be due and payable in full on the Maturity Date.

## 2.7 Conversion and Continuation Options.

(a) The Borrower may elect from time to time to convert Eurodollar Loans to ABR Loans by giving the Bank irrevocable notice of such election prior to 11:00 a.m., Charlotte, North Carolina time on the date of such conversion, provided, that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto, and provided, further, to the extent an Event of Default has occurred and is continuing on the last day of any such Interest Period, the applicable Eurodollar Loan shall automatically be converted to an ABR Loan. The Borrower may elect from time to time to convert ABR Loans to Eurodollar Loans by giving the Bank at least two (2) Business Days' prior irrevocable notice of such election. All or any part of outstanding Eurodollar Loans or ABR Loans may be converted as provided herein, provided, that (i) no ABR Loan may be converted into a Eurodollar Loan after the date that is thirty (30) days prior to the Maturity Date and (ii) such notice of conversion regarding any Eurodollar Loan shall contain an election by the Borrower of an Interest Period for such Eurodollar Loan to be created by such conversion and such Interest Period shall be in accordance with the terms of the definition of the term "Interest Period" including without limitation subparagraphs (A) through (D) thereof.

(b) Subject to the restrictions set forth in Section 2.3 hereof, any Eurodollar Loan may be continued as such upon the expiration of the current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Bank, in accordance with the applicable notice provision for the conversion of ABR Loans to Eurodollar Loans set forth herein, of the length of the next Interest Period to be applicable to such Loans, provided, that no Eurodollar Loan may be continued as such after the date that is one (1) month prior to the Maturity Date, provided,

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further, no Eurodollar Loans may be continued as such if an Event of Default has occurred and is continuing as of the last day of the Interest Period for such Eurodollar Loan, and provided, further, that if the Borrower shall fail to give any required notice as described above or otherwise herein, or if such continuation is not permitted pursuant to the proceeding proviso, such Loan shall automatically be converted to an ABR Loan on the last day of such then

expiring Interest Period.

## 2.8 Interest Rates and Payment Dates.

(a) The Loans outstanding hereunder from time to time shall bear interest at a rate per annum equal to either (i) with respect to a Eurodollar Loan, the Eurodollar Rate determined for the applicable Interest Period plus the Applicable Percentage or (ii) with respect to an ABR Loan, the ABR, as selected by the Borrower at the Lessee's direction in accordance with the provisions hereof; provided, however, (A) the Loans of the Lender shall bear interest at the ABR applicable from time to time from and after the dates and during the periods specified in Section 2.9(c), (B) the Loans shall bear interest at the ABR applicable from time to time from and after the dates and during the periods specified in Section 11.3(f) of the Participation Agreement and (C) in such other circumstances as expressly provided herein, the Loans shall bear interest at the ABR.

(b) If all or a portion of (i) the principal amount of any Loan, (ii) any interest payable thereon or (iii) any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is the lesser of (x) the then current rate of interest respecting such payment plus two percent (2%) and (y) the highest interest rate permitted by applicable law, in each case from the date of such non-payment until such amount is paid in full (whether after or before judgment). All such amounts referenced in this Section 2.8(b) shall be paid upon demand.

(c) Interest shall be payable in arrears on the applicable Scheduled Interest Payment Date (but for any Loan having an Interest Period of six (6) months, interest shall be payable in arrears on each applicable three (3) month anniversary date of the commencement of such Loan), provided, that (i) interest accruing pursuant to paragraph (b) of this Section 2.8 shall be payable from time to time on demand and (ii) each prepayment of the Loans shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

## 2.9 Computation of Interest.

(a) Whenever it is calculated on the basis of the Prime Lending Rate, interest shall be calculated on the basis of a year of three hundred sixty-five (365) days (or three hundred sixty-six (366) days, as the case may be) for the actual days elapsed; and, otherwise, interest shall be calculated on the basis of a year of three hundred sixty (360) days for the actual days elapsed. The Bank shall as soon as practicable notify the Borrower of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the day on which such change

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becomes effective. The Bank shall as soon as practicable notify the Borrower of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Bank pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower in the absence of manifest error.

(c) If the Eurodollar Rate cannot be determined by the Bank in the manner specified in the definition of the term "Eurodollar Rate", the Bank shall give telecopy or telephonic notice thereof to the Borrower as soon as practicable thereafter. Until such time as the Eurodollar Rate can be determined by the Bank in the manner specified in the definition of such term, no further Eurodollar Loans shall be made or shall be continued as such at the end of the then current Interest Period nor shall the Borrower have the right to convert ABR Loans to Eurodollar Loans.

## 2.10 [Intentionally Left Blank].

## 2.11 Notice of Amounts Payable; Mandatory Assignment.

(a) In the event that the Bank becomes aware that any amounts are or will be owed to it pursuant to Sections 11.2(e) or 11.3 of the Participation Agreement or that it is unable to make Eurodollar Loans, then it shall promptly notify the Borrower and the Lessee thereof and, as soon as possible thereafter, the Bank shall submit to the Borrower a certificate indicating the amount owing to it and the calculation thereof. The amounts set forth in such certificate shall be prima facie evidence of the obligations of the Borrower hereunder.

(b) In the event that the Bank delivers to the Borrower a certificate in accordance with Section 2.11(a) in connection with amounts payable pursuant to Sections 11.2(e) or 11.3 of the Participation Agreement or the Bank is required to make Loans as ABR Loans in accordance with Section 11.3(d) of the Participation Agreement then, subject to Section 9.1 of the Participation

Agreement, the Borrower may, at its own expense (provided, such amounts shall be reimbursed or paid entirely (as elected by the Borrower) by the Lessee, as Supplemental Rent) and in the discretion of the Borrower, (i) require the Bank to transfer or assign, in whole or (with the Bank's consent) in part, without recourse (in accordance with Section 9.8), all or (with the Bank's consent) part of its interests, rights (except for rights to be indemnified for actions taken while a party hereunder) and obligations under this Agreement to a replacement bank or institution if the Borrower (subject to Section 9.1 of the Participation Agreement), with the full cooperation of the Bank, can identify a Person who is ready, willing and able to be such replacement bank or institution with respect thereto and such replacement bank or institution shall assume such assigned obligations, or (ii) during such time as no Default or Event of Default has occurred and is continuing, terminate the Commitment and prepay all outstanding Loans, provided, however, that (x) subject to Section 9.1 of the Participation Agreement, the Borrower or such replacement bank or institution, as the case may be, shall have paid to the Bank in immediately available funds the principal of and interest accrued to the date of such payment on the Loans made by it hereunder and all other amounts owed to it hereunder (and all Holder Advances and Holder Yield accrued and unpaid thereon), (y) any termination of Commitments shall be subject to the terms of Section 2.5(a) and (z) such assignment or termination of the

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Commitment and prepayment of Loans does not conflict with any law, rule or regulation or order of any court or Governmental Authority.

### 3. REPRESENTATIONS AND WARRANTIES

To induce the Bank to enter into this Agreement and to make the Loans, each of the Trust Company and the Owner Trustee hereby makes and affirms the representations and warranties set forth in Section 6.1 of the Participation Agreement to the same extent as if such representations and warranties were set forth in this Agreement in their entirety.

### SECTION 4. CONDITIONS PRECEDENT

#### 4.1 Conditions to Effectiveness.

The effectiveness of this Agreement is subject to the satisfaction of all conditions precedent set forth in Section 5.3 of the Participation Agreement required by said Section to be satisfied on or prior to the Initial Closing Date.

#### 4.2 Conditions to Each Loan.

The agreement of the Bank to make any Loan requested to be made by it on any date is subject to the satisfaction of all conditions precedent set forth in Section 5.3 and 5.4 of the Participation Agreement required by said Sections to be satisfied on or prior to the date of the applicable Loan.

Each borrowing by the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such Loan that the conditions contained in this Section 4.2 have been satisfied.

### SECTION 5. COVENANTS

So long as any Loan or Note remains outstanding and unpaid or any other amount is owing to the Bank hereunder:

#### 5.1 Other Activities.

The Borrower shall not conduct, transact or otherwise engage in, or commit to transact, conduct or otherwise engage in, any business or operations other than the entry into, and exercise of rights and performance of obligations in respect of, the Operative Agreements and other activities incidental or related to the foregoing.

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#### 5.2 Ownership of Properties, Indebtedness.

The Borrower shall not own, lease, manage or otherwise operate any properties or assets other than in connection with the activities described in Section 5.1, or incur, create, assume or suffer to exist any Indebtedness or other consensual liabilities or financial obligations other than as may be incurred, created or assumed or as may exist in connection with the activities described in Section 5.1 (including without limitation the Loans and other

obligations incurred by the Borrower hereunder).

### 5.3 Disposition of Assets.

The Borrower shall not convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets, whether now owned or hereafter acquired, except to the extent expressly contemplated by the Operative Agreements.

### 5.4 Compliance with Operative Agreements.

The Borrower shall at all times (a) observe and perform all of the covenants, conditions and obligations required to be performed by it (whether in its capacity as the Lessor, the Owner Trustee or otherwise) under each Operative Agreement to which it is a party and (b) observe and perform, or cause to be observed and performed, all of the covenants, conditions and obligations of the Lessor under the Lease, even in the event that the Lease is terminated at stated expiration following a Lease Event of Default or otherwise.

### 5.5 Further Assurances.

At any time and from time to time, upon the written request of the Bank, and at the expense of the Borrower (provided, such amounts shall be reimbursed or paid entirely (as elected by the Borrower) by the Lessee, as Supplemental Rent), the Borrower will promptly and duly execute and deliver such further instruments and documents and take such further action as the Bank may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and the other Operative Agreements and of the rights and powers herein or therein granted.

### 5.6 Notices.

If on any date, a Responsible Officer of the Borrower shall obtain actual knowledge of the occurrence of a Default or Event of Default, the Borrower will give written notice thereof to the Bank within five (5) Business Days after such date.

### 5.7 Discharge of Liens.

Neither the Borrower nor the Trust Company will create or permit to exist at any time, and will, at its own expense, promptly take such action as may be necessary duly to discharge, or cause to be discharged, all Lessor Liens attributable to it, provided, that the Borrower and the

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Trust Company shall not be required to discharge any Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any material danger of impairment of any of the Liens contemplated by the Security Documents or of the sale, forfeiture or loss of, and shall not materially interfere with the disposition of, any Property or title thereto or any interest therein or the payment of Rent.

### 5.8 Trust Agreement.

Without prejudice to any right under the Trust Agreement of the Owner Trustee to resign, the Owner Trustee (a) agrees not to terminate or revoke the trust created by the Trust Agreement except as permitted by Article VIII of the Trust Agreement, (b) agrees not to amend, supplement, terminate, revoke or otherwise modify any provision of the Trust Agreement in any manner which could reasonably be expected to have an adverse effect on the rights or interests of the Bank hereunder or under the other Operative Agreements and (c) agrees to comply with all of the terms of the Trust Agreement.

## SECTION 6. EVENTS OF DEFAULT

Upon the occurrence of any of the following specified events (each an "Event of Default"):

(a) Except as provided in Sections 6(c), the Borrower shall (i) default in the payment when due of any principal on the Loans or (ii) default in the payment when due of any interest on the Loans, and such default in such payment of interest shall continue for fifteen (15) or more days; or

(b) Except as provided in Sections 6(a) and 6(c), the Borrower shall default, and such default shall continue for fifteen (15) or more days, in the payment of any amount owing under any Credit Document; or

(c) (i) The Borrower shall default in the payment of any amount due on the Maturity Date owing under any Credit Document or (ii) the Borrower shall default in the payment when due of any principal or interest on the Loans

payable with regard to any obligation of Lessee to pay Termination Value when due or to pay Basic Rent or Supplemental Rent at such time as any Termination Value is due; or

(d) The Borrower shall default in the due performance or observance by it of any term, covenant or agreement contained in any Credit Document to which it is a party (other than those referred to in paragraphs (a), (b) and (c) above), provided, that in the case of any such default under Sections 5.4, 5.5 or 5.8(c), such default shall have continued unremedied for a period of at least thirty (30) days after notice to the Borrower by the Bank, provided, further, if any such default under Sections 5.4, 5.5 or 5.8(c) is not capable of remedy within such thirty (30) day period but may be remedied with further diligence and if the Borrower has and continues to

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pursue diligently such remedy, then the Borrower shall be granted additional time to pursue such remedy but in no event more than an additional thirty (30) days.

(e) Any representation, warranty or statement made or deemed made by the Borrower herein or in any other Credit Document or by the Borrower or the Lessee in the Participation Agreement, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto, shall prove to be untrue in any material respect on the date as of which made or deemed made; or

(f) (i) Any Lease Event of Default shall have occurred and be continuing or (ii) the Owner Trustee shall default in the due performance or observance by it of any term, covenant or agreement contained in the Participation Agreement or in the Trust Agreement to or for the benefit of the Bank, provided, that in the case of this clause (ii) such default shall have continued unremedied for a period of at least fifteen (15) days after notice to the Owner Trustee and Lessee by the Bank, provided, further, that in the case of this clause (ii), such default is not capable of remedy within such fifteen (15) day period but may be remedied with further diligence and if the Borrower has and continues to pursue diligently such remedy, then the Borrower shall be granted additional time to pursue such remedy but in no event more than an additional thirty (30) days; or

(g) The Borrower shall commence a voluntary case concerning itself under the Bankruptcy Code or an involuntary case is commenced against the Borrower and the petition is not contravened within ten (10) days after commencement of the case or an involuntary case is commenced against the Borrower and the petition is not dismissed within sixty (60) days after commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of the Borrower; or the Borrower commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Borrower, or there is commenced against the Borrower any such proceeding which remains undismissed for a period of sixty (60) days; or the Borrower is adjudicated insolvent or bankrupt, or any order of relief or other order approving any such case or proceeding is entered; or the Borrower suffers any appointment of any custodian or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of sixty (60) days; or the Borrower makes a general assignment for the benefit of creditors; or any corporate or partnership action is taken by the Borrower for the purpose of effecting any of the foregoing; or

(h) Any Security Document shall cease to be in full force and effect, or shall cease to give the Bank the Liens, rights, powers and privileges purported to be created thereby (including without limitation a first priority perfected security interest in, and Lien on, all of the Properties), superior to and prior to the rights of all third Persons and subject to no other Liens (except in each case to the extent expressly permitted herein or in any Operative Agreement) other than any Ground Lease; or

(i) The Lease shall cease to be enforceable against the Lessee; or

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(j) One (1) or more judgments or decrees shall be entered against the Borrower involving a liability of \$100,000 or more in the aggregate for all such judgments and decrees for the Borrower and any such judgments or decrees shall not have been vacated, discharged or stayed or bonded pending appeal within sixty (60) days from the entry thereof,

then, and in any such event, (A) if such event is an Event of Default specified in paragraph (g) above with respect to the Borrower, automatically the Commitments shall immediately terminate and the Loans hereunder (with accrued

interest thereon) and all other amounts owing under this Agreement and the Notes shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) the Bank may, by notice to the Borrower declare the Commitments to be terminated forthwith, whereupon the Commitments shall immediately terminate; and (ii) the Bank may by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the Notes to be due and payable forthwith, whereupon the same shall immediately become due and payable (any of the foregoing occurrences or actions referred to in clause (A) or (B) above, an "Acceleration"). Except as expressly provided above in this Section 6, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

Upon the occurrence of any Event of Default and at any time thereafter so long as any Event of Default shall be continuing, the Bank may exercise any or all of the rights and powers and pursue any and all of the remedies available to it hereunder and (subject to the terms thereof) under the other Credit Documents, the Lease and the other Operative Agreements and shall have any and all rights and remedies available under the Uniform Commercial Code or any provision of law.

Upon the occurrence of any Event of Default and at any time thereafter so long as any Event of Default shall be continuing, the Bank may proceed to protect and enforce this Agreement, the Notes, the other Credit Documents and the Lease by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Property or for the recovery of judgment for the indebtedness secured thereby or for the enforcement of any other proper, legal or equitable remedy available under applicable laws.

The Borrower shall be liable for any and all accrued and unpaid amounts due hereunder before, after or during the exercise of any of the foregoing remedies, including without limitation all reasonable legal fees and other reasonable costs and expenses incurred by the Bank by reason of the occurrence of any Event of Default or the exercise of remedies with respect thereto.

#### SECTION 7. [INTENTIONALLY LEFT BLANK]

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#### SECTION 8. MATTERS RELATING TO PAYMENT AND COLLATERAL

##### 8.1 Collection and Allocation of Payments and Other Amounts.

The Lessee, the Construction Agent, the Bank and the Borrower have agreed pursuant to the terms of Section 8.7 of the Participation Agreement to a procedure for the allocation of certain payments, including without limitation the proceeds of Collateral.

##### 8.2 Certain Remedial Matters.

Notwithstanding any other provision of this Agreement or any other Credit Document:

(a) the Borrower shall at all times retain to the exclusion of all other parties, all rights to Excepted Payments payable to it and to demand, collect or commence an action at law to obtain such payments and to enforce any judgment with respect thereto; and

(b) the Borrower and the Bank shall at all times retain the right (i) to retain all rights with respect to insurance that Article XIV of the Lease specifically confers upon the "Lessor", (ii) to provide such insurance as the Lessee shall have failed to maintain or as the Borrower or the Bank may desire, and (iii) to enforce compliance by the Lessee with the provisions of Articles VIII, IX, X, XI, XIV and XVII of the Lease.

##### 8.3 Excepted Payments.

Notwithstanding any other provision of this Agreement or the Security Documents, any Excepted Payment received at any time by the Bank shall be distributed promptly to the Person entitled to receive such Excepted Payment.

#### SECTION 9. MISCELLANEOUS

##### 9.1 Amendments and Waivers.

None of the terms or provisions of this Agreement may be terminated, amended, supplemented, waived or modified except in accordance with the terms of Section 12.4 of the Participation Agreement.

9.2 Notices.

All notices required or permitted to be given under this Agreement shall be given in accordance with Section 12.2 of the Participation Agreement.

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9.3 No Waiver; Cumulative Remedies.

No failure to exercise and no delay in exercising, on the part of the Bank, any right, remedy, power or privilege hereunder or under the other Credit Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.4 Survival of Representations and Warranties.

All representations and warranties made by the Borrower under the Operative Agreements shall survive the execution and delivery of this Agreement and the Notes and the making of the Loans hereunder.

9.5 Payment of Expenses and Taxes.

The Borrower agrees to (with funds provided by the Lessee as Supplemental Rent): (a) pay all reasonable out-of-pocket costs and expenses of the Bank (i) whether or not the transactions herein contemplated are consummated, in connection with the negotiation, preparation, execution and delivery of the Operative Agreements and the documents and instruments referred to therein (including without limitation the reasonable fees and disbursements of Moore & Van Allen, PLLC) and any amendment, waiver or consent relating thereto (including without limitation the reasonable fees and disbursements of counsel to the Agent) and (ii) in connection with the enforcement of the Operative Agreements and the documents and instruments referred to therein (including without limitation the reasonable fees and disbursements of counsel for the Bank and for each of the Lenders) and (b) pay and hold the Bank harmless from and against any and all present and future stamp and other similar taxes with respect to the foregoing matters and from and against any and all liabilities with respect to or resulting from any delay or omission to pay such taxes.

9.6 Successors and Assigns; Participations and Assignments.

This Agreement shall be binding upon and inure to the benefit of the Borrower and the Bank and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank.

9.7 [Intentionally Left Blank].

9.8 Assignments.

(a) Subject to and in accordance with Section 10.1 of the Participation Agreement, the Bank may, in the ordinary course of its business and in accordance with applicable law, at any time and from time to time assign with the consent, subject to Section 9.1 of the

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Participation Agreement, of the Borrower (which shall not be unreasonably withheld or delayed and which consent of the Borrower shall not be required during the continuation of any Event of Default), to any bank, financial institution or other entity that is either organized under the laws of the United States or any state thereof or is a foreign bank that operates a branch office in the United States (each, a "Purchasing Lender") all or any part of its rights and obligations under this Agreement and the other Operative Agreements pursuant to an Assignment and Acceptance, substantially in the form of Exhibit B. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Acceptance, (x) the Purchasing Lender thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of the Bank hereunder with a Commitment as set forth therein, and (y) the Bank shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and the Bank shall cease to be a party hereto). Notwithstanding anything to the contrary in this Agreement, the consent of the Borrower shall not be required, and, unless requested by the relevant Purchasing Lender, new Notes shall not be required to be executed and delivered by the Borrower, for any assignment which occurs at any time when any of the events described in Section 6(g) shall have occurred and be continuing.



(b) Upon its receipt of an Assignment and Acceptance executed by the Bank and a Purchasing Lender the Borrower shall execute and deliver to Purchasing Lender new Notes (in exchange for the Notes of the Bank), each in an amount equal to the Commitment assumed or Loans purchased by the relevant Purchasing Lender pursuant to such Assignment and Acceptance. Such new Notes shall be dated the effective date of the applicable Assignment and Acceptance and shall otherwise be in the form of the Notes replaced thereby.

(c) [Intentionally Left Blank].

(d) The Bank may, from time to time and without the consent of the Borrower or any other Person, pledge or assign for security purposes any portion of its Loans or any other interests in this Agreement and the other Credit Documents to any Federal Reserve Bank.

9.9 [Intentionally Left Blank].

9.10 Set-off.

(a) [Intentionally Left Blank].

(b) In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence of an Event of Default, the Bank is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) and any other Indebtedness at any time held or owing by the Bank (including without limitation by branches and agencies of the Bank wherever located) to or for the credit or the account of the Borrower against and on account of the obligations and liabilities of the

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Borrower to the Bank under this Agreement or under any of the other Operative Agreements, and all other claims of any nature or description arising out of or connected with this Agreement or any other Operative Agreement, irrespective of whether or not the Bank shall have made any demand and although said obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

9.11 Counterparts.

This Agreement may be executed by one (1) or more of the parties to this Agreement on any number of separate counterparts (including without limitation by telecopy), and all of said counterparts taken together shall be deemed to constitute one (1) and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Bank.

9.12 Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.13 Integration.

This Agreement and the other Credit Documents represent the agreement of the Borrower and the Bank with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Bank relative to subject matter hereof not expressly set forth or referred to herein or in the other Credit Documents.

9.14 GOVERNING LAW.

THIS AGREEMENT AND THE NOTES AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NORTH CAROLINA.

9.15 SUBMISSION TO JURISDICTION; VENUE; ARBITRATION.

THE PROVISIONS OF THE PARTICIPATION AGREEMENT RELATING TO SUBMISSION TO JURISDICTION, VENUE AND ARBITRATION ARE HEREBY INCORPORATED BY REFERENCE HEREIN, MUTATIS MUTANDIS.

9.16 Acknowledgments.

The Borrower hereby acknowledges that:

(a) The Bank has no fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Credit Documents, and the relationship between the Bank on one (1) hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(b) no joint venture is created hereby or by the other Credit Documents or otherwise exists by virtue of the transactions contemplated hereby or among the Borrower and the Bank.

9.17 WAIVERS OF JURY TRIAL.

THE BORROWER AND THE BANK HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

9.18 Nonrecourse.

In addition to and not in limitation of Section 12.9 of the Participation Agreement, anything to the contrary contained in this Agreement or in any other Operative Agreement notwithstanding, no Exculpated Person shall be personally liable in any respect for any liability or obligation hereunder or under any other Operative Agreement including without limitation the payment of the principal of, or interest on, the Notes, or for monetary damages for the breach of performance of any of the covenants contained in this Agreement, the Notes or any of the other Operative Agreements. The Bank agrees that, in the event it pursues any remedies available under this Agreement, the Notes or any other Operative Agreement, the Bank shall not have any recourse against the Borrower, nor any other Exculpated Person, for any deficiency, loss or claim for monetary damages or otherwise resulting therefrom and recourse shall be had solely and exclusively against the Trust Estate and the Lessee; but nothing contained herein shall be taken to prevent recourse against or the enforcement of remedies against the Trust Estate in respect of any and all liabilities, obligations and undertakings contained in this Agreement, the Notes or any other Operative Agreement. The Bank further agrees that the Borrower shall not be responsible for the payment of any amounts owing hereunder (excluding principal and interest (other than Overdue Interest) in respect of the Loans) (such non-excluded amounts, "Supplemental Amounts") except to the extent that payments of Supplemental Rent designated by the Lessee for application to such Supplemental Amounts shall have been paid by the Lessee pursuant to the Lease (it being understood that the failure by the Lessee for any reason to pay any Supplemental Rent in respect of such Supplemental Amounts shall nevertheless be deemed to constitute a default by the Borrower for the purposes of Section 6). Notwithstanding the foregoing provisions of this Section 9.18, nothing in this Agreement or any other Operative Agreement shall (a) constitute a waiver, release or discharge of any obligation evidenced or secured by this Agreement or any other Credit Document, (b) limit the right of the Bank to name the Borrower as a party defendant in any action or suit for judicial foreclosure and sale under any Security Document, or (c) affect in any way the validity or enforceability of any guaranty

(whether of payment and/or performance) given to the Lessor or the Bank or of any indemnity agreement given by the Borrower, in connection with the Loans made hereunder.

9.19 USURY SAVINGS PROVISION.

IT IS THE INTENT OF THE PARTIES HERETO TO CONFORM TO AND CONTRACT IN STRICT COMPLIANCE WITH APPLICABLE USURY LAW FROM TIME TO TIME IN EFFECT AND THAT N.C. GEN. STAT. ss. 24-9 SHALL APPLY WITH RESPECT TO THIS AGREEMENT. TO THE EXTENT N.C. GEN. STAT. ss. 24-9 IS HEREAFTER DEEMED NOT TO APPLY BY A COURT OF COMPETENT JURISDICTION AND ANY PAYMENTS HEREUNDER ARE HEREAFTER CHARACTERIZED BY ANY COURT OF COMPETENT JURISDICTION AS THE REPAYMENT OF PRINCIPAL AND INTEREST THEREON, THE FOLLOWING PROVISIONS OF THIS SECTION 9.19 SHALL APPLY. ANY SUCH PAYMENTS SO CHARACTERIZED AS INTEREST MAY BE REFERRED TO HEREIN AS "INTEREST." ALL AGREEMENTS AMONG THE PARTIES HERETO ARE HEREBY LIMITED BY THE PROVISIONS OF THIS PARAGRAPH WHICH SHALL OVERRIDE AND CONTROL ALL SUCH AGREEMENTS, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER WRITTEN OR ORAL. IN NO WAY, NOR IN ANY EVENT OR CONTINGENCY (INCLUDING WITHOUT LIMITATION PREPAYMENT OR ACCELERATION OF THE MATURITY OF ANY OBLIGATION), SHALL ANY INTEREST TAKEN, RESERVED, CONTRACTED FOR, CHARGED, OR RECEIVED UNDER THIS AGREEMENT OR OTHERWISE, EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMISSIBLE UNDER APPLICABLE LAW. IF, FROM ANY POSSIBLE CONSTRUCTION OF ANY OF THE OPERATIVE AGREEMENTS OR ANY OTHER DOCUMENT OR AGREEMENT, INTEREST WOULD OTHERWISE BE PAYABLE IN EXCESS OF THE MAXIMUM NONUSURIOUS AMOUNT, ANY SUCH CONSTRUCTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH AND SUCH AMOUNTS UNDER SUCH

DOCUMENTS OR AGREEMENTS SHALL BE AUTOMATICALLY REDUCED TO THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED UNDER APPLICABLE LAW, WITHOUT THE NECESSITY OF EXECUTION OF ANY AMENDMENT OR NEW DOCUMENT OR AGREEMENT. IF THE BANK SHALL EVER RECEIVE ANYTHING OF VALUE WHICH IS CHARACTERIZED AS INTEREST WITH RESPECT TO THE OBLIGATIONS OWED HEREUNDER OR UNDER APPLICABLE LAW AND WHICH WOULD, APART FROM THIS PROVISION, BE IN EXCESS OF THE MAXIMUM LAWFUL AMOUNT, AN AMOUNT EQUAL TO THE AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE INTEREST SHALL, WITHOUT PENALTY, BE APPLIED TO THE REDUCTION OF THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL AND NOT TO THE PAYMENT OF INTEREST, OR REFUNDED TO THE BORROWER OR ANY OTHER PAYOR THEREOF, IF AND TO THE EXTENT SUCH AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE EXCEEDS THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL. THE RIGHT TO DEMAND PAYMENT OF ANY AMOUNTS EVIDENCED BY ANY OF THE OPERATIVE AGREEMENTS DOES NOT INCLUDE THE RIGHT TO RECEIVE ANY INTEREST WHICH HAS NOT OTHERWISE ACCRUED ON THE DATE OF SUCH DEMAND, AND THE BANK DOES NOT INTEND TO CHARGE OR RECEIVE ANY UNEARNED

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INTEREST IN THE EVENT OF SUCH DEMAND. ALL INTEREST PAID OR AGREED TO BE PAID TO THE BANK, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BE AMORTIZED, PRORATED, ALLOCATED, AND SPREAD THROUGHOUT THE FULL STATED TERM (INCLUDING WITHOUT LIMITATION ANY RENEWAL OR EXTENSION) OF THIS AGREEMENT SO THAT THE AMOUNT OF INTEREST ON ACCOUNT OF SUCH PAYMENTS DOES NOT EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED BY APPLICABLE LAW.

[signature pages follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

FIRST SECURITY BANK, NATIONAL  
ASSOCIATION, not individually, except as  
expressly stated herein, but solely as the  
Owner Trustee under the DTSD Realty Trust  
1999-1

By: /s/ Val T. Orton

Name: Val T. Orton

Title: Vice President

FIRST UNION NATIONAL BANK, as Lender

By: /s/ Eileen McCrickard

Name: Eileen McCrickard

Title: Vice President

Exhibit A

PROMISSORY NOTE

(DTSD Realty Trust 1999-1)

\_\_\_\_\_, 199\_\_

FOR VALUE RECEIVED, the undersigned, FIRST SECURITY BANK, NATIONAL ASSOCIATION, not in its individual capacity, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1 (the "Borrower"), hereby unconditionally promises to pay to the order of FIRST UNION NATIONAL BANK (the "Lender"), at the office of First Union National Bank, located at c/o First Union Capital Markets Group, DC6, 301 South College Street, Charlotte, North Carolina 28288-0166 or at

such other address as may be specified by the Lender, in lawful money of the United States of America and in immediately available funds, on the Maturity Date the aggregate unpaid principal amount of all Loans made by the Lender to the Borrower pursuant to Section 2.1 of the Credit Agreement (as defined below). The Borrower agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.8 of such Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of each Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation thereof and each conversion of all or a portion thereof to another Type. Each such endorsement shall constitute prima facie evidence of the accuracy of the information endorsed. The failure to make any such endorsement or any error in such endorsement shall not affect the obligations of the Borrower in respect of such Loan.

This Note (a) is one (1) of the Notes referred to in the Credit Agreement dated as of June 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower and the Lender, (b) is subject to the provisions of the Credit Agreement (including without limitation Section 9.18 thereof) and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. Reference is hereby made to the Credit Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one (1) or more of the Events of Default, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

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All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NORTH CAROLINA.

[The remainder of this page has been left blank intentionally.]

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IN WITNESS WHEREOF, the undersigned authorized officer of the Owner Trustee has executed this Promissory Note as of the date first set forth above.

FIRST SECURITY BANK, NATIONAL  
ASSOCIATION, not individually, but  
solely as the Owner Trustee under the  
DTSD Realty Trust 1999-1

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit B

ASSIGNMENT AND ACCEPTANCE

Reference is made to the Credit Agreement, dated as of June 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among FIRST SECURITY BANK, NATIONAL ASSOCIATION, not in its

individual capacity, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1 (the "Owner Trustee" or the "Borrower"), and FIRST UNION NATIONAL BANK, as the Lender. Unless otherwise defined herein, terms defined in the Credit Agreement (or pursuant to Section 1 of the Credit Agreement, defined in other agreements) and used herein shall have the meanings given to them in or pursuant to the Credit Agreement.

FIRST UNION NATIONAL BANK (the "Assignor") and [\_\_\_\_\_] (the "Assignee") agree as follows:

1. The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor, as of the Effective Date (as defined below), a 100% interest (the "Assigned Interest") in and to the Assignor's rights and obligations under the Credit Agreement with respect to the credit facility contained in the Credit Agreement as are set forth on Schedule 1 hereto (the "Assigned Facility"), in a principal amount for the Assigned Facility as set forth on Schedule 1.

2. The Assignor (a) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or any other Operative Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Operative Agreement or any other instrument or document furnished pursuant thereto, other than that it has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any such adverse claim; (b) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower, or any other obligor or the performance or observance by the Borrower, or any other obligor of any of their respective obligations under the Credit Agreement or any other Operative Agreement or any other instrument or document furnished pursuant hereto or thereto; and (c) attaches the Note held by it evidencing the Assigned Facility and requests that the Borrower exchange such Note for a new Note payable to the Assignee.

3. The Assignee (a) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (b) confirms that it has received copies of the Operative Agreements, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (c) agrees that it will, independently and without reliance upon the Assignor and based on such documents and

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information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto; and (d) agrees that it will be bound by the provisions of the Credit Agreement and the other Operative Agreements to which Assignee is a party and will perform in accordance herewith all the obligations which by the terms of the Credit Agreement and the other Operative Agreements to which Assignee is a party are required to be performed by it.

4. The effective date of this Assignment and Acceptance shall be [\_\_\_\_\_, 199\_] (the "Effective Date").

5. From and after the Effective Date, the Borrower shall make all payments in respect of the Assigned Interest (including without limitation payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Borrower for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

6. From and after the Effective Date, (a) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and under the other Operative Agreements and shall be bound by the provisions thereof and (b) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Credit Agreement and the other Operative Agreements.

7. THIS ASSIGNMENT AND ACCEPTANCE SHALL BE GOVERNED BY, AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA.

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IN WITNESS WHEREOF, the parties hereto have caused this Assignment and

Acceptance to be executed as of the date first above written by their respective duly authorized officers on Schedule 1 hereto.

FIRST UNION NATIONAL BANK, as Assignor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Name of Assignee]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Consented To:

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[consents required only to the extent expressly provided in Section 9.8 of the Credit Agreement]

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SCHEDULE 1  
TO ASSIGNMENT AND ACCEPTANCE  
RELATING TO THE CREDIT AGREEMENT,  
DATED AS OF JUNE 2, 1999,  
AMONG  
FIRST SECURITY BANK, NATIONAL ASSOCIATION  
NOT INDIVIDUALLY,  
BUT SOLELY AS THE OWNER TRUSTEE,  
AND  
FIRST UNION NATIONAL BANK, AS LENDER

Name of Assignor: First Union National Bank

Name of Assignee: \_\_\_\_\_

Effective Date of Assignment: \_\_\_\_\_

Credit Principal Facility Assigned	Commitment Amount Assigned	Percentage Assigned
-----	\$ -----	----- 100%

FIRST UNION NATIONAL BANK, as Assignor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Name of Assignee], as Assignee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AGENCY AGREEMENT

Dated as of June 2, 1999

between

DOLLAR TREE DISTRIBUTION, INC.,  
as the Construction Agent

and

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually, but solely as the  
Owner Trustee under the DTSD Realty Trust 1999-1,  
as the Lessor

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AGENCY AGREEMENT

THIS AGENCY AGREEMENT, dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Agreement"), between FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association ("FSB"), not individually, but solely as Owner Trustee under the DTSD Realty Trust 1999-1 (the "Lessor") and DOLLAR TREE DISTRIBUTION, INC. a Virginia corporation (the "Construction Agent").



A. The Lessor and the Construction Agent are parties to that certain Lease Agreement dated as of even date herewith (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Lease"), pursuant to which the Construction Agent, as lessee (in such capacity, the "Lessee") has agreed to lease certain Land, Improvements and Equipment and/or to sublease a ground leasehold in certain Properties subject to one (1) or more Ground Leases from the Lessor.

B. In connection with the execution and delivery of the Participation Agreement, the Lease and the other Operative Agreements, and subject to the terms and conditions hereof, (i) the Lessor desires to appoint the Construction Agent as its sole and exclusive agent in connection with the identification and acquisition or ground lease of the Properties (provided, title to the Properties shall be held in the name of the Lessor, except that the interest of the Lessor in certain of the Properties shall be a ground leasehold interest pursuant to one (1) or more Ground Leases, if requested by the Construction Agent) and the development, acquisition, installation, construction and testing of the Improvements and the Equipment in accordance with the Plans and Specifications and (ii) the Construction Agent desires, for the benefit of the Lessor, to identify and acquire or ground lease the Properties and to cause the development, acquisition, installation, construction and testing of the Improvements, the Equipment and the other components of the Properties in accordance with the Plans and Specifications and to undertake such other liabilities and obligations as are herein set forth.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

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#### ARTICLE I

##### DEFINITIONS; RULES OF USAGE

###### 1.1 Definitions.

For purposes of this Agreement, capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in Appendix A to that certain Participation Agreement dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof, the "Participation Agreement") among the Construction Agent, the various parties thereto from time to time, as the Guarantors, the Lessor, and First Union National Bank ("Bank"), as lender and holder. Unless otherwise indicated, references in this Agreement to articles, sections, paragraphs, clauses, appendices, schedules and exhibits are to the same contained in this Agreement.

###### 1.2 Interpretation.

The rules of usage set forth in Appendix A to the Participation Agreement shall apply to this Agreement.

#### ARTICLE II

##### APPOINTMENT OF THE CONSTRUCTION AGENT

###### 2.1 Appointment.

Subject to the terms and conditions hereof, the Lessor hereby irrevocably designates and appoints the Construction Agent as its exclusive agent, and the Construction Agent accepts such appointment, in connection with the identification and acquisition from time to time of the Properties (provided, title to the Properties shall be held in the name of the Lessor, except that the interest of the Lessor in certain Properties shall be a ground leasehold interest pursuant to one (1) or more Ground Leases if requested by the Construction Agent) and the development, acquisition, installation, construction and testing of the Improvements, the Equipment and the other components of the Properties in accordance with the Plans and Specifications on the Land, and pursuant to the terms of the Operative Agreements. Notwithstanding any provisions hereof or in any other Operative Agreement to the contrary, the Construction Agent acknowledges and agrees that the Lessor shall advance no more than the sum of the aggregate Commitment plus the aggregate amount of the Holder Commitments in regard to the Properties (including without limitation for any and all Advances in the aggregate under the Credit Agreement and under the Trust Agreement).

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###### 2.2 Acceptance and Undertaking.

The Construction Agent hereby unconditionally accepts the agency appointment and undertakes, for the benefit of the Lessor, to identify and acquire certain Properties (provided, title to the Properties shall be held in the name of the Lessor, except that the interest of the Lessor in certain Properties shall be a ground leasehold interest pursuant to one (1) or more Ground Leases if requested by the Construction Agent) and the development, acquisition, installation, construction and testing of the Improvements, the Equipment and the other components of the Properties in accordance with the Plans and Specifications and the Operative Agreements.

2.3 Term.

This Agreement shall commence on the date hereof and shall terminate on the Construction Period Termination Date.

2.4 Scope of Authority.

(a) The Lessor hereby expressly authorizes the Construction Agent, or any agent or contractor of the Construction Agent, and the Construction Agent unconditionally agrees for the benefit of the Lessor, subject to Section 2.4(b), to take all action necessary or desirable for the performance and satisfaction of any and all of the Lessor's obligations under any construction agreement and to fulfill all of the obligations of the Construction Agent including without limitation:

(i) the identification and assistance with the acquisition of Properties in accordance with the terms and conditions of the Participation Agreement;

(ii) all design and supervisory functions relating to the development, acquisition, installation, construction and testing of the related Improvements, Equipment and other components of the applicable Property and performing all engineering work related thereto;

(iii) (A) negotiating, entering into, performing and enforcing all contracts and arrangements to acquire or ground lease the Properties and to procure the equipment necessary to construct the Properties and (B) negotiating, executing, performing and enforcing all contracts and arrangements to develop, acquire, install, construct and test the Improvements, the Equipment and the other components of the Properties on such terms and conditions as are customary and reasonable in light of local and national standards and practices and the businesses in which the Lessee is engaged;

(iv) obtaining all necessary permits, licenses, consents, approvals, entitlements and other authorizations, including without limitation all of the foregoing required for the Properties and the use and occupancy thereof and those required under applicable Law (including without limitation Environmental

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Laws), from all Governmental Authorities in connection with the development, acquisition, installation, construction and testing of the Improvements, the Equipment and the other components of the Properties in accordance with the Plans and Specifications;

(v) maintaining all books and records with respect to the Properties and the construction, operation and management thereof; and

(vi) performing any other acts necessary in connection with the identification and acquisition or ground leasing of the Properties and the development, acquisition, installation, construction and testing of the related Improvements, Equipment and all other additional components of the Properties in accordance with the Plans and Specifications.

(b) Neither the Construction Agent nor any of its Affiliates or agents shall enter into any contract or consent to any contract in the name of the Lessor without the Lessor's prior written consent, such consent to be given or withheld in the exercise of the Lessor's reasonable discretion; provided, however, that (i) no such contract will increase the obligations of the Lessor beyond the obligations of the Lessor as are expressly set forth in the Operative Agreements and (ii) each such contract shall be expressly non-recourse to the Lessor on terms and conditions that are reasonably acceptable to the Lessor.

(c) Subject to the terms and conditions of this Agreement and the other Operative Agreements, the Construction Agent shall have sole management and control over the installation, construction and testing means, methods, sequences and procedures with respect to the Properties.

## 2.5 Delegation of Duties

The Construction Agent may execute any of its duties under this Agreement by or through agents, contractors, employees or attorneys-in-fact; provided, however, that no such delegation shall limit or reduce in any way the Construction Agent's duties and obligations under this Agreement.

## 2.6 Covenants of the Construction Agent.

The Construction Agent hereby covenants and agrees that it will:

(a) following the Construction Commencement Date for each Property, cause the development, acquisition, installation, construction and testing of such Property to be prosecuted in a good and workmanlike manner, and respecting each Property in accordance with the applicable Plans and Specifications, the Construction Budget, the applicable contracts relating to the Improvements, the Equipment, other components of such Property and procurement of construction materials, the applicable construction

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contracts, the applicable construction schedule, prevalent industry practices and otherwise in accordance with Section 3.1 hereof;

(b) not commence construction with respect to any Improvements on a date that is within six (6) months prior to the Construction Period Termination Date;

(c) cause the Completion Date for any Improvements to occur on or before the earlier of (i) the date that is twelve (12) months after the initial Construction Advance made in connection with such Improvements or (ii) the Construction Period Termination Date, in each case free and clear (by removal or bonding) of Liens or claims for materials supplied or labor or services performed in connection with the development, acquisition, installation, construction or testing thereof;

(d) cause all outstanding punch list items with respect to such Improvements to be completed by the Completion Date;

(e) at all times subsequent to the initial Advance respecting a Property (i) cause good and marketable title to the applicable Property to vest in the Owner Trustee (except that the interest of the Lessor in certain Properties shall be a ground leasehold interest pursuant to one (1) or more Ground Leases if requested by the Construction Agent) (ii) cause a valid, perfected, first priority Lien on the applicable Property to be in place in favor of the Bank, (iii) file all necessary documents under the applicable real property law and Article 9 of the Uniform Commercial Code to perfect such title and Liens and (iv) not permit Liens (other than Permitted Liens and Lessor Liens) to be filed or maintained respecting the applicable Property;

(f) no less than five (5) Business Days prior to the scheduled date for the initial Construction Advance to be made in connection with any Property, the Construction Agent shall deliver to the Bank (for the benefit of the Lessor) true, complete and correct copies of the Construction Budget therefor;

(g) procure insurance for the Properties during the Construction Period in accordance with the provisions of Article XIV of the Lease; and

(h) on or before the Construction Period Termination Date, cause the Rent Commencement Date to occur with respect to all Properties or purchase any such Properties for an amount equal to the sum referenced in Section 5.3(b) hereof and otherwise in compliance with the other terms and provisions of the Operative Agreements.

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### 3.1 Construction.

The Construction Agent shall cause the Improvements, the Equipment and all other components of the Properties to be developed, acquired, installed, constructed and tested in compliance with all Legal Requirements, all Insurance Requirements, all manufacturer's specifications and standards and the standards maintained by the Construction Agent for similar properties owned or operated by the Construction Agent, and all specifications and standards applicable to properties of the Lessee which are similar to the Permitted Facilities, unless non-compliance, individually or in the aggregate, shall not have and could not be reasonably expected to have a Material Adverse Effect.

### 3.2 Amendments; Modifications.

(a) The Construction Agent may at any time revise, amend or modify (i) the Plans and Specifications without the consent of the Lessor; provided, that any such amendment to the Plans and Specifications does not (x) result in the Completion Date of the Improvements occurring on or after the Construction Period Termination Date or (y) result in the cost of all Improvements exceeding the amount specified in the Construction Budget, as amended from time to time, or an amount equal to the sum of the then Available Commitments plus the then Available Holder Commitments (reduced by the amount, if any, necessary to pay for the cost of construction and development of Improvements on other Properties which are currently under construction but have not yet been completed (such amount the "Unfunded Amount")), and (ii) the Construction Budget and enter into any related amendments, modifications or supplements without the consent of the Lessor; provided, that such revisions, amendments or modifications to the Plans and Specifications or related amendments, modifications or supplements to the Construction Budget do not result in any increase in total Property Costs greater than the amount specified in the Construction Budget, as amended from time to time, or the then Available Commitments and Available Holder Commitment (reduced by the Unfunded Amount). Notwithstanding the foregoing, it is specifically understood and agreed that if at any time the total Property Costs remaining to be expended exceed the Unfunded Amount, the Construction Agent shall have the rights to purchase set forth in Section 5.3(c) and the limitations on recourse set forth in Section 5.4.

(b) The Construction Agent agrees that it will not implement any revision, amendment or modification to the Plans and Specifications for any Property if the aggregate effect of such revision, amendment or modification, when taken together with any previous or contemporaneous revision, amendment or modification to the Plans or Specifications for any Property, would cause a material reduction in value in excess of the cost reduction of such revision, amendment or modification of the Property when completed, unless such revision, amendment or modification is required by Legal Requirements.

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## ARTICLE IV

### PAYMENT OF FUNDS

#### 4.1 Right to Receive Construction Cost.

(a) In connection with the development, acquisition, installation, construction and testing of any Property and during the course of the construction of the Improvements on any Property, the Construction Agent may request that the Lessor advance funds for the payment of Property Acquisition Costs or other Property Costs, and the Lessor will comply with such request to the extent provided for under the Participation Agreement. The Construction Agent and the Lessor acknowledge and agree that the Construction Agent's right to request such funds and the Lessor's obligation to advance such funds for the payment of Property Acquisition Costs or other Property Costs is subject in all respects to the terms and conditions of the Participation Agreement and each of the other Operative Agreements. Without limiting the generality of the foregoing it is specifically understood and agreed that in no event shall the aggregate amounts advanced by the Bank for Property Acquisition Costs or other Property Costs and any other amounts due and owing hereunder or under any of the other Operative Agreements exceed the sum of the aggregate Commitment plus the aggregate amount of the Holder Commitments, including without limitation such amounts owing for (i) development, acquisition, installation, construction and testing of the Properties, (ii) additional amounts which accrue or become due and owing under the Credit Agreement or Trust Agreement as obligations of the Lessor prior to any Completion Date or (iii) any other purpose.

(b) The proceeds of any funds made available to the Lessor to pay Property Acquisition Costs or other Property Costs shall be made available to the Construction Agent in accordance with the Requisition relating thereto and the terms of the Participation Agreement. The Construction Agent will use such proceeds only to pay the Property Acquisition Costs or other Property Costs set forth in the Requisition

relating to such funds.

ARTICLE V

EVENTS OF DEFAULT

5.1 Events of Default.

If any one (1) or more of the following events (each an "Agency Agreement Event of Default") shall occur:

(a) the Construction Agent fails to apply any funds paid by the Lessor to the Construction Agent in a manner consistent with the requirements of the Operative Agreements and as specified in the applicable Requisition for the development,

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acquisition, installation, construction and testing of the Properties and related Improvements and Equipment or otherwise respecting the Properties to the payment of Property Acquisition Costs or other Property Costs;

(b) the Completion Date with respect to any Property shall fail to occur for any reason on or prior to the Construction Period Termination Date or the Construction Agent shall abandon or permanently discontinue the construction and development of such Construction Period Property (which abandonment or permanent discontinuance shall be deemed to have occurred if no work at such Construction Period Property is undertaken or completed during a continuous period of sixty (60) days or more);

(c) any Event of Default (as such term is defined in Appendix A to the Participation Agreement) shall have occurred and not be cured within any cure period expressly permitted under the terms of the applicable Operative Agreement;

(d) the Construction Agent shall materially breach any of its representations or warranties under any Operative Agreement or shall fail to observe or perform any term, covenant or condition of any Operative Agreement other than as set forth in paragraphs (a), (b) or (c) of this Section 5.1 and such failure to observe or perform any such term, covenant or condition shall continue for more than fifteen (15) days after notice thereof to the Construction Agent; and

(e) there occurs an Environmental Violation that is reasonably likely to cost or actually costs more than \$50,000 to remediate;

then, in any such event, the Lessor may, in addition to the other rights and remedies provided for in this Agreement, terminate this Agreement by giving the Construction Agent written notice of such termination and upon the expiration of the time fixed in such notice and the payment of all amounts owing by the Construction Agent hereunder (including without limitation any amounts specified under Section 5.3 hereof), this Agreement shall terminate. The Construction Agent shall pay all costs and expenses incurred by or on behalf of the Lessor, including without limitation fees and expenses of counsel, as a result of any Agency Agreement Event of Default hereunder.

5.2 Damages.

The termination of this Agreement pursuant to Section 5.1 shall in no event relieve the Construction Agent of its liability and obligations hereunder, all of which shall survive any such termination.

5.3 Remedies; Remedies Cumulative.

(a) If an Agency Agreement Event of Default shall have occurred and be continuing, the Lessor shall have all rights available to the Lessor under the Lease and the

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other Operative Agreements and all other rights otherwise available at law, equity or otherwise.

(b) Upon the occurrence of an Agency Agreement Event of Default, the Lessor shall have (in addition to its rights otherwise described in this Agreement or existing at law, equity or otherwise) the option (and shall be deemed automatically, and without any further action, to have exercised such option upon the occurrence of any Lease

Event of Default arising under Sections 17.1(g), (h) or (i) of the Lease) to transfer and convey to the Construction Agent upon a date designated by the Lessor all right, title and interest of the Lessor in and to any Property or Properties (including without limitation any Land and/or any Improvements, any interest in any Improvements, any Equipment and any Property then under construction) for which the Rent Commencement Date has not yet occurred (a "Construction Period Property"). On any transfer and conveyance date specified by the Lessor pursuant to this Section 5.3(b), (i) the Lessor shall transfer and convey (at the cost of the Construction Agent) all right, title and interest of the Lessor in and to any or all such Construction Period Properties free and clear of the Lien of the Lease and all Lessor Liens, (ii) the Construction Agent hereby covenants and agrees that it will accept such transfer and conveyance of right, title and interest in and to the respective Construction Period Property or Construction Period Properties and (iii) the Construction Agent hereby promises to pay to the Lessor, as liquidated damages (it being agreed that it would be impossible accurately to determine actual damages), an aggregate amount equal to the Termination Value of any or all such Construction Period Properties. The Construction Agent specifically acknowledges and agrees that its obligations under this Section 5.3(b), including without limitation its obligations to accept the transfer and conveyance of Construction Period Properties and its payment obligations described in subparagraph (iii) of this Section 5.3(b), shall be absolute and unconditional under any and all circumstances and shall be performed and/or paid, as the case may be, without notice or demand and without any abatement, reduction, diminution, setoff, defense, counterclaim or recoupment whatsoever. Notwithstanding the foregoing provisions of this Section 5.3(b), the Lessor shall have the right in its sole discretion to rescind any exercise of its option under this Section 5.3(b) upon the giving of its written confirmation of such rescission to the Construction Agent on or prior to the earlier to occur of (a) the actual date of transfer and (b) the date one hundred and twenty (120) days after the date the Lessor has given notice of its intent to transfer and convey any Property to the Construction Agent as referenced above in this Section 5.3(b).

(c) The Construction Agent shall have the right to cure an Agency Agreement Event of Default hereunder with respect to any given Property by purchasing or causing the Lessee to purchase such Property from the Lessor (to the extent such Agency Agreement Event of Default is no longer continuing with respect to any other Property remaining subject to this Agreement after such purchase) for an amount equal to the liquidated damages amount set forth in Section 5.3(b) of this Agreement.

(d) No failure to exercise and no delay in exercising, on the part of the Lessor, any right, remedy, power or privilege under this Agreement or under the other Operative

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Agreements shall operate as a waiver thereof; nor shall any single or partial exercise of any right remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided in this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

#### 5.4 Limitation on Recourse.

Notwithstanding anything contained herein or in any other Operative Agreement to the contrary, upon the occurrence and during the continuance of an Agency Agreement Event of Default relating solely to one or more of the Construction Period Properties, the maximum aggregate amount that the Lessor, or any person or entity acting by or through the Lessor, including without limitation the Bank, shall be entitled to recover from the Lessee on account of such Agency Agreement Event of Default shall be an amount equal to the sum of (i) 89% of the aggregate Property Cost for all Construction Period Properties, exclusive of the portion of the aggregate Property Cost expended for the purchase of the Land related to such Construction Period Properties (the "Land Cost") plus (ii) 100% of the Land Cost, plus (iii) all amounts owed by the Lessee or the Construction Agent under or with respect to any Operative Agreement in connection with any Environmental Violation related to such Construction Period Properties plus (iv) any loss, cost or damage suffered by the Lessor or the Bank in connection with or as a result of (1) fraud, misapplication of funds, illegal acts or willful misconduct on the part of the Lessee or the Construction Agent or (2) any claim by any third party caused by or resulting from the Lessee's or the Construction Agent's actions or failure to act while in possession or control of any Construction Period Property (it being understood and agreed that the Construction Agent shall be deemed to be in possession and control of each Construction Period Property at all times until

such possession and control is relinquished pursuant to the terms of the Operative Agreements) or (3) a bankruptcy of the Lessee or the Construction Agent minus (v) any amount expended by the Construction Agent on behalf of the Lessor if the Lessor is obligated to reimburse the Construction Agent for such amount but such reimbursement has not yet occurred. The Construction Agent nonetheless acknowledges and agrees that (y) even though the maximum aggregate recovery from the Credit Parties is limited as aforesaid, the Lessor's right of recovery from the Construction Period Properties (as opposed to any recovery from the Credit Parties) is not so limited and the Lessor shall be entitled to recover 100% of the amounts owed to the Lessor in accordance with the Operative Agreements from its interest in the Properties and (z) the provisions of this Section 5.4 shall in no way limit or otherwise affect the obligations of the Lessee and the Construction Agent (or the recourse of the Bank against the Lessee and the Construction Agent) with respect to the Properties that are not Construction Period Properties (whether such obligations or recourse arise under the Operative Agreements or otherwise).

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## ARTICLE VI

### THE LESSORS RIGHTS

#### 6.1 Exercise of the Lessors Rights.

Subject to the Excepted Payments, the Construction Agent and the Lessor hereby acknowledge and agree that, subject to and in accordance with the terms of the Security Agreement made by the Lessor in favor of the Bank, the rights and powers of the Lessor under this Agreement have been assigned to the Bank.

#### 6.2 The Lessors Right to Cure the Construction Agents Defaults.

The Lessor, without waiving or releasing any obligation or Agency Agreement Event of Default, may (but shall be under no obligation to) remedy any Agency Agreement Event of Default for the account of and at the sole cost and expense of the Construction Agent. All out-of-pocket costs and expenses so incurred (including without limitation fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by the Lessor, shall be paid by the Construction Agent to the Lessor on demand.

## ARTICLE VII

### MISCELLANEOUS

#### 7.1 Notices.

All notices required or permitted to be given under this Agreement shall be in writing and delivered as provided in Section 12.2 of the Participation Agreement.

#### 7.2 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Lessor, the Construction Agent and their respective successors and the assigns of the Lessor. The Construction Agent may not assign this Agreement or any of its rights or obligations hereunder or with respect to any Property in whole or in part to any Person without the prior written consent of the Bank and the Lessor.

#### 7.3 GOVERNING LAW.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

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#### 7.4 SUBMISSION TO JURISDICTION; VENUE; WAIVERS; ARBITRATION.

The provisions of the Participation Agreement relating to submission to jurisdiction, venue AND ARBITRATION are hereby incorporated by reference herein, mutatis mutandis.

#### 7.5 Amendments and Waivers.

This Agreement may not be terminated, amended, supplemented, waived or modified except in accordance with the provisions of Section 12.4 of the Participation Agreement.

7.6 Counterparts.

This Agreement may be executed in any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one (1) and the same instrument.

7.7 Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

7.8 Headings and Table of Contents.

The headings and table of contents contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

7.9 WAIVER OF JURY TRIAL.

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, THE LESSOR AND THE CONSTRUCTION AGENT IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND ANY COUNTERCLAIM THEREUNDER.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

DOLLAR TREE DISTRIBUTION, INC,  
as the Construction Agent

By: /s/ Frederick C. Coble

Name: Frederick C. Coble

Title: Sr. V.P.

FIRST SECURITY BANK, NATIONAL  
ASSOCIATION, not individually, but solely  
as Owner Trustee under the DTSD Realty  
Trust 1999-1, as the Lessor

By: /s/ Val T. Orton

Name: Val T. Orton

Title: Vice President



TRUST AGREEMENT

dated as of June 2, 1999

between

FIRST UNION NATIONAL BANK  
as the Holder,

and

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
as the Owner Trustee

DTSD REALTY TRUST 1999-1

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THIS TRUST AGREEMENT, dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Trust Agreement"), is between FIRST UNION NATIONAL BANK ("Bank" or "Holder") and FIRST SECURITY BANK, NATIONAL ASSOCIATION, in its individual capacity ("Trust Company"), and in its capacity as owner trustee hereunder, together with its successors and assigns (the "Owner Trustee").

WHEREAS, in order to provide a portion of the funds for carrying out the other transactions contemplated by the Operative Agreements, the Holder will make Holder Advances pursuant to this Trust Agreement and the Participation Agreement (as defined below);

WHEREAS, the Holder desires to provide for the Trust to exist for the purpose of (a) developing, acquiring, installing, constructing and testing various Properties and leasing such Properties to Lessee and (b) carrying out certain transactions contemplated by the Operative Agreements; and

WHEREAS, Trust Company is willing to act as trustee hereunder and to accept the trust created hereby (the "Trust").

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

ARTICLE I

DEFINITIONS

SECTION 1.1 Definitions.

For purposes of this Trust Agreement (including without limitation the "WHEREAS" clauses set forth above), capitalized terms used in this Trust Agreement and not otherwise defined herein shall have the meanings assigned to them in Appendix A to that certain Participation Agreement dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof, the "Participation Agreement") among Dollar Tree Distribution, Inc., as the Lessee and as the Construction Agent, the various parties thereto from time to time, as

the Guarantors, the Owner Trustee, the Holder, and First Union National Bank, as lender (the "Lender"). Unless otherwise indicated, references in this Trust Agreement to articles, sections, paragraphs, clauses, appendices, schedules and exhibits are to the same contained in this Trust Agreement.

SECTION 1.2 Interpretation.

The rules of usage set forth in Appendix A to the Participation Agreement shall apply to this Trust Agreement.

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ARTICLE II

AUTHORITY TO EXECUTE AND PERFORM VARIOUS DOCUMENTS;  
DECLARATION OF TRUST BY TRUST COMPANY

SECTION 2.1 Authority To Execute and Perform Various Documents.

The Holder hereby authorizes and directs the Owner Trustee (a) to execute and deliver, as trustee for and on behalf of the Holder, each Operative Agreement to which the Owner Trustee is a party and any other agreements, instruments, certificates or documents related to the transactions contemplated hereby to which the Owner Trustee is a party, (b) to take whatever action shall be required to be taken by the Owner Trustee by the terms of, and exercise its rights and perform its duties under, each of the documents, agreements, instruments and certificates referred to in clause (a) above as set forth in such documents, agreements and certificates, and (c) subject to the terms of this Trust Agreement, to take such other action in connection with the foregoing as the Holder may from time to time direct.

SECTION 2.2 Declaration of Trust by Trust Company.

(a) Trust Company hereby declares that it will hold all estate, right, title and interest of the Owner Trustee in, to and under each Property, each Holder Advance, the Operative Agreements, any other property contributed by the Holder and any and all other property or assets from time to time of the Trust, including without limitation all amounts of Rent, insurance proceeds and condemnation awards, indemnity or other payments of any kind (collectively, the "Trust Estate") as the Owner Trustee upon the trusts set forth herein and for the use and benefit of the Holder, subject, however, to the provisions of the Credit Agreement and the Security Documents. The name of the Trust shall be "DTSD Realty Trust 1999-1".

(b) The purpose of the Trust is to hold title to the Trust Estate for the benefit of the Holder and to engage in activities ancillary and incidental thereto as the Holder shall determine to be desirable. Except in connection with the foregoing, the Owner Trustee shall not (i) engage in any business activity, (ii) have any property, rights or interest, whether real or personal, tangible or intangible, (iii) incur any legal liability or obligation, whether fixed or contingent, matured or unmatured, other than in the normal course of the administration of the Trust or (iv) subject any of its property or assets to any mortgage, Lien, security interest or other claim or encumbrance, other than in favor of the Lender or the Holder pursuant to the provisions of the Operative Agreements and this Trust Agreement. THIS TRUST IS NOT A BUSINESS TRUST. THE SOLE PURPOSE OF THE TRUST IS TO ACQUIRE AND HOLD TITLE TO THE TRUST ESTATE FOR THE BENEFIT OF THE HOLDER. THE OWNER TRUSTEE MAY NOT TRANSACT BUSINESS OF ANY KIND WITH RESPECT TO ANY PROPERTY COMPRISING THE TRUST ESTATE NOR SHALL THIS AGREEMENT BE

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DEEMED TO BE, OR CREATE OR EVIDENCE THE EXISTENCE OF A CORPORATION DE FACTO OR DE JURE, OR A MASSACHUSETTS TRUST, OR ANY OTHER TYPE OF BUSINESS TRUST, ASSOCIATION OR JOINT VENTURE BETWEEN THE OWNER TRUSTEE AND THE BANK.

ARTICLE III

CONTRIBUTIONS AND PAYMENTS

SECTION 3.1 Procedure for Holder Advances; Certificates.

(a) Upon receipt from Lessee by the Bank of a Requisition, and subject to the terms and conditions of the Participation Agreement, the Holder shall make an Advance under the Holder Commitment on each date Advances are made pursuant to Section 5 of the Participation Agreement,

provided, that the Lessee shall give the Holder irrevocable notice (which notice must be received by the Holder no less than two (2) Business Days prior to the requested date of a Eurodollar Holder Advance) specifying (i) the amount to be advanced (which on any date shall not be in excess of the then Available Holder Commitment), (ii) the requested date of advance, (iii) whether the Holder Advance is to be a Eurodollar Holder Advance or an ABR Holder Advance or a combination thereof, (iv) if the Holder Advance is to be a combination of Eurodollar Holder Advances and ABR Holder Advances, the respective amounts of each type of Holder Advance and (v) the Interest Period applicable to any Eurodollar Holder Advances.

(b) Upon receipt of any such notice delivered pursuant to Section 3.1(a), the Holder shall make the amount of its Advance available for the account of the Owner Trustee at the office of the Bank referred to in Section 12.2 of the Participation Agreement (or at such other address as may be identified by the Bank from time to time) prior to 11:00 a.m., Charlotte, North Carolina time on the date requested by Lessee in funds immediately available to the Owner Trustee.

(c) Holder Yield accruing on each Holder Advance during the Construction Period with respect to any property shall, subject to the limitations set forth in Section 5.1(b) of the Participation Agreement, be added to the amount of the Holder Advance on the relevant Scheduled Interest Payment Date. On such Scheduled Interest Payment Date, the Holder Property Cost and Holder Construction Property Cost shall be increased by the amount of Holder Yield added to the Holder Advance.

(d) The Holder Advances made to the Trust Estate shall be evidenced by a Certificate of the Owner Trustee, substantially in the form of Exhibit A hereto. Each Certificate shall (i) be dated on or about the Initial Closing Date, (ii) be stated to mature on the Maturity Date and (iii) bear a yield on the unpaid Holder Amount thereof from time to time outstanding at the Holder Yield.

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(e) To the extent that the Owner Trustee, in its capacity as Borrower under the Credit Agreement, shall have elected to terminate or reduce the amount of the Commitments pursuant to Section 2.5(a) of the Credit Agreement, a pro rata election shall be deemed to have been made with respect to the Holder Commitment. The Holder Commitments respecting any particular Property shall automatically be reduced to zero (0) upon the occurrence of the Rent Commencement Date respecting such Property. On any date on which the Commitments shall be reduced to zero (0) as a result of a Credit Agreement Event of Default, the Holder Commitments shall automatically be reduced to zero (0) and the Owner Trustee shall prepay the Certificate in full for the outstanding Holder Amount, together with accrued but unpaid Holder Yield thereon and all other amounts owing under the Certificate.

#### SECTION 3.2 Holder Yield.

(a) Holder Advances shall bear yield payable by the Owner Trustee and calculated at the rate of Holder Yield applicable from time to time. Payment of Holder Yield to the Holder shall be made in arrears on each Scheduled Interest Payment Date occurring after the Rent Commencement Date or as otherwise provided herein or in Section 2.6 of the Credit Agreement or Section 8.7 of the Participation Agreement.

(b) If all or a portion of Holder Yield shall not be received by the Holder when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall, without limiting the rights of the Holder hereunder or under any Operative Agreement, bear interest at the Holder Overdue Rate, in each case from the date of nonpayment until paid (whether after or before judgment) and shall be paid upon demand.

#### SECTION 3.3 Scheduled Return of Holder Advances.

The outstanding Holder Amount shall be due in full on the Expiration Date. On each such date and on the Expiration Date, subject to the terms of the Participation Agreement, the Owner Trustee shall pay to the Holder the aggregate Holder Amount then due, together with all accrued but unpaid Holder Yield and all other amounts due to the Holder from the Owner Trustee hereunder or under the Operative Agreements.

#### SECTION 3.4 Early Return of Advances.

(a) Subject to Sections 11.2(e), 11.3 and 11.4 of the Participation Agreement, the Owner Trustee may at any time and from time to time prepay the Certificates, in whole or in part, without

premium or penalty, upon at least three (3) Business Days' irrevocable notice to the Holder, specifying the date and amount of prepayment and whether the prepayment is of ABR Holder Advances or Eurodollar Holder Advances or a combination thereof, and, if a combination thereof, the amount allocable to each. If such notice is given, the amount specified in such notice shall be due and payable on the date specified therein. Amounts prepaid shall not be readvanced, except as set forth in Section 5.2(d) of the Participation Agreement.

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(b) If on any date the Bank or the Owner Trustee shall receive any payment in respect of (i) any Casualty, Condemnation or Environmental Violation pursuant to Sections 15.1(a) or 15.1(g) or Article XVI of the Lease (excluding any payments in respect thereof which are payable to Lessee in accordance with the Lease), or (ii) the Termination Value of any Property in connection with the delivery of a Termination Notice pursuant to Article XVI of the Lease, or (iii) the Termination Value of any Property or such other applicable amount in connection with the exercise of a Purchase Option under Article XX of the Lease or the exercise of the option of the Owner Trustee to transfer the Properties to the Lessee pursuant to Section 20.3 of the Lease or (iv) any payment required to be made or elected to be made by the Construction Agent to the Owner Trustee pursuant to the Agency Agreement, then in each case, the Holder shall receive proceeds in accordance with the allocation procedure set forth in Section 8.7(b) of the Participation Agreement.

(c) Each prepayment of the Certificates pursuant to Section 3.4(a) shall be allocated to reduce the respective Holder Property Costs of all Properties pro rata according to the Holder Property Costs of such Properties immediately before giving effect to such prepayment. Each prepayment of the Certificates pursuant to Section 3.4(b) shall be allocated to reduce the Holder Property Cost of the Property or Properties subject to the respective Casualty, Condemnation, Environmental Violation, termination, purchase, transfer or other circumstance giving rise to such prepayment. Any amounts applied to reduce the Holder Property Cost of any Construction Period Property pursuant to this paragraph (c) shall also be applied to reduce the Construction Loan Property Cost of such Property until such Construction Loan Property Cost has been reduced to zero (0).

#### SECTION 3.5 Payments from Trust Estate Only.

All payments to be made by the Owner Trustee under this Trust Agreement (including without limitation any payments pursuant to Section 11.4 of the Participation Agreement) shall be made only from the income and proceeds from the Trust Estate and only to the extent that the Owner Trustee shall have received income or proceeds from the Trust Estate to make such payments in accordance with the terms hereof, except as specifically provided in Section 6.1. The Holder agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for payment as herein provided and that, except as specially provided in any Operative Agreement, Trust Company shall not be liable to the Holder for any amounts payable under this Trust Agreement and shall not be subject to any liability under this Trust Agreement.

#### SECTION 3.6 Method of Payment.

All amounts payable to the Holder pursuant to this Trust Agreement shall be paid or caused to be paid by the Owner Trustee to, or for the account of, the Holder, or its nominee, by transferring such amount in immediately available funds to a bank institution or banking

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institutions with bank wire transfer facilities for the account of the Holder or as otherwise instructed in writing from time to time by the Holder.

#### SECTION 3.7 Computation of Yield.

(a) Whenever it is calculated on the basis of the Prime Lending Rate, Holder Yield shall be calculated on the basis of a year of three hundred sixty-five (365) days (or three hundred sixty-six (366) days, as the case may be) for the actual days elapsed; and, otherwise, Holder Yield shall be calculated on the basis of a year of three hundred sixty (360) days for the actual days elapsed. Any change in the Holder Yield resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective.

(b) Pursuant to Section 12.12 of the Participation Agreement,

the calculation of Holder Yield under this Section 3.7 shall be made by the Bank. Each determination of an interest rate by the Bank shall be conclusive and binding on the Owner Trustee in the absence of manifest error.

(c) If the Eurodollar Rate cannot be determined by the Bank in the manner specified in the definition of the term "Eurodollar Rate", commencing on the next occurring Scheduled Interest Payment Date and continuing until such time as the Eurodollar Rate can be determined by the Bank in the manner specified in the definition of such term, all outstanding Holder Advances shall bear a yield at the ABR. Until such time as the Eurodollar Rate can be determined by the Bank in the manner specified in the definition of such term, no further Eurodollar Holder Advances shall be made or shall be continued as such at the end of the then current Interest Period nor shall the Owner Trustee have the right to convert ABR Holder Advances to Eurodollar Holder Advances.

#### SECTION 3.8 Conversion and Continuation Options.

(a) The Owner Trustee may elect from time to time to convert Eurodollar Holder Advances to ABR Holder Advances by giving the Bank irrevocable notice of such election no later than 11:00 a.m., Charlotte, North Carolina time on the date of such conversion, provided, that any such conversion of Eurodollar Holder Advances may only be made on the last day of an Interest Period with respect thereto, and provided, further, to the extent an Event of Default has occurred and is continuing on the last day of any such Interest Period, the applicable Eurodollar Holder Advance shall automatically be converted to an ABR Holder Advance. The Owner Trustee may elect from time to time to convert ABR Holder Advances to Eurodollar Holder Advances by giving the Bank at least three two (2) Business Days' prior irrevocable notice of such election. Any such notice of conversion to Eurodollar Holder Advances shall specify the length of the initial Interest Period or Interest Periods therefor. All or any part of outstanding Eurodollar Holder Advances or ABR Holder Advances may be converted as provided herein, provided, that (i) no ABR Holder Advance may be converted into a Eurodollar Holder Advance after the date that is thirty (30) days prior to the Maturity Date and (ii) such

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notice of conversion shall contain an election by the Owner Trustee of an Interest Period for such Eurodollar Holder Advance to be created by such conversion and such Interest Period shall be in accordance with the terms of the definition of the term "Interest Period" including without limitation subparagraphs (A) through (D) thereof.

(b) Subject to the restrictions set forth in Section 3.1, any Eurodollar Holder Advance may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Owner Trustee giving irrevocable notice to the Bank in accordance with the notice provisions for the conversion of ABR Holder Advances to Eurodollar Holder Advances set forth herein and the applicable provisions of the term "Interest Period" of the length of the next Interest Period to be applicable to such Eurodollar Holder Advances, provided, that no Eurodollar Holder Advance may be continued as such after the date that is thirty (30) days prior to the Maturity Date, provided, further, no Eurodollar Holder Advance may be continued as such if an Event of Default has occurred and is continuing as of the last day of the Interest Period for such Eurodollar Holder Advance, and provided, further, that if the Owner Trustee shall fail to give any required notice as described above or if such continuation is not permitted pursuant to the preceding proviso or otherwise, such Advances shall automatically be converted to ABR Advances on the last day of such then expiring Interest Period.

#### SECTION 3.9 Notice of Amounts Payable.

(a) In the event that the Holder becomes aware that any amounts are or will be owed to it pursuant to Sections 11.2(e) or 11.3 of the Participation Agreement or that it is unable to make Holder Advances which bear a yield based on the Eurodollar Rate plus the Applicable Percentage for Eurodollar Holder Advances, then it shall promptly notify the Owner Trustee thereof and, as soon as possible thereafter, the Holder shall submit to the Owner Trustee a certificate indicating the amount owing to it and the calculation thereof. The amounts set forth in such certificate shall be prima facie evidence of the obligations of the Owner Trustee hereunder.

(b) In the event that the Holder delivers to the Owner Trustee a certificate in accordance with Section 3.9(a), or the Holder is required to make Holder Advances with Holder Yields calculated at the ABR in accordance with Section 11.3(f) of the Participation Agreement,

subject to Section 9.2 of the Participation Agreement, the Owner Trustee may, at the expense of Lessee and in the discretion of the Owner Trustee, (i) require the Holder to transfer or assign, in whole or (with the Holder's consent) in part, without recourse (in accordance with Section 11.8), all or (with the Holder's consent) part of its interests, rights (except for rights to be indemnified for actions taken while a party hereunder) and obligations under this Agreement to a replacement bank or institution if the Owner Trustee (subject to Section 9.2 of the Participation Agreement) and with the full cooperation of the Holder) can identify a Person who is ready, willing and able to be such replacement bank or institution with respect thereto and such replacement bank or institution shall assume such assigned obligations, or (ii) during such time as no Default or Event of Default has occurred and is continuing, terminate the Holder Commitment of

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the Holder and prepay the outstanding Holder Advances of the Holder, provided, however, that (x) subject to Section 9.2 of the Participation Agreement, the Owner Trustee or such replacement bank or institution, as the case may be, shall have paid to the Holder in immediately available funds the amount of the Holder Advances and Holder Yield accrued to the date of such payment on the Holder Advances made by it hereunder (and the principal and interest on all Loans accrued and unpaid thereon) and (y) such assignment or termination of the Holder Commitment of the Holder and prepayment of the Holder Advances do not conflict with any law, rule or regulation or order of any court or Governmental Authority.

#### ARTICLE IV

##### COLLECTIONS AND DISTRIBUTIONS

###### SECTION 4.1 Collections and Remittances by the Owner Trustee.

The Owner Trustee agrees that, subject to the provisions of this Trust Agreement and the Operative Agreements, it will during the term of this Trust administer the Trust Estate and, at the direction of the Holder, take steps to collect all Rent and other sums payable to the Owner Trustee by Lessee under the Lease. The Owner Trustee agrees to distribute, or cause to be distributed, all proceeds received from the Trust Estate in accordance with Article III and Sections 4.2 and 4.3. The Owner Trustee shall make, or cause to be made, such distribution promptly upon receipt of such proceeds (provided, such proceeds are available for distribution) by the Bank (on behalf of the Owner Trustee), it being understood and agreed that the Owner Trustee shall not be obligated to make, or to cause to be made, such distribution until the funds for such distribution have been received by the Bank (on behalf of the Owner Trustee) in cash or its equivalent reasonably acceptable to the Owner Trustee.

###### SECTION 4.2 Priority of Distributions.

Subject to the terms and requirements of the Operative Agreements, all payments and amounts received by Trust Company as the Owner Trustee or on its behalf shall be distributed to the Bank for allocation in accordance with the terms of Section 8.7 of the Participation Agreement.

###### SECTION 4.3 Excepted Payments.

Anything in this Article IV or elsewhere in this Trust Agreement to the contrary notwithstanding, any Excepted Payment received at any time by the Owner Trustee shall be distributed promptly to the Person entitled to receive such Excepted Payment.

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###### SECTION 4.4 Distributions after Default.

Subject to the terms of Section 5.1, the proceeds received by the Owner Trustee from the exercise of any remedy under the Lease shall be distributed pursuant to Section 4.2 above. This Trust shall cease and terminate in accordance with the terms set forth in Section 8.1 and upon the final disposition by the Owner Trustee of all of the Trust Estate pursuant to this Section 4.4.

#### ARTICLE V

##### DUTIES OF THE OWNER TRUSTEE

SECTION 5.1 Notice of Certain Events.

In the event the Owner Trustee shall have knowledge of any Default or Event of Default, the Owner Trustee shall give written notice thereof within five (5) Business Days to the Holder and the Lessee unless such Default or Event of Default no longer exists before the giving of such notice. Subject to the provisions of Section 5.3 of this Trust Agreement and Sections 8.5 and 9.2 of the Participation Agreement, the Owner Trustee shall take or refrain from taking such action as the Bank shall direct until such time as the Loans are paid in full (and as more specifically provided in Sections 8.2(h) and 8.6 of the Participation Agreement) by written instructions to the Owner Trustee. If the Owner Trustee shall have given the Holder (and respecting Sections 8.5 and 9.2 of the Participation Agreement, the Lessee) notice of any event and shall not have received written instructions as above provided within thirty (30) days after mailing notice of such event to the Holder (and respecting Sections 8.5 and 9.2 of the Participation Agreement, the Lessee), the Owner Trustee may, but shall be under no duty to, and shall have no liability for its failure or refusal to, take or refrain from taking any action with respect thereto, not inconsistent with the provisions of the Operative Agreements, as the Owner Trustee shall deem advisable and in the best interests of the Bank. For all purposes of this Trust Agreement, in the absence of actual knowledge of a Responsible Officer in the Corporate Trust Department of Trust Company, the Owner Trustee shall be deemed not to have knowledge of any Default or Event of Default unless a Responsible Officer of the Corporate Trust Department of Trust Company receives notice thereof given by or on behalf of the Holder or the Lessee.

SECTION 5.2 Action Upon Instructions.

Subject to the provisions of Sections 5.1 and 5.3, upon the written instructions of the Holder, the Owner Trustee will take or refrain from taking such action or actions as may be specified in such instructions.

SECTION 5.3 Indemnification.

The Owner Trustee shall not be required to take or refrain from taking any action under this Trust Agreement or any other Operative Agreement (other than the actions specified in the first sentence of Section 5.1 and in the last sentence of Section 5.4) unless Trust Company shall

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have been indemnified by Lessee or by the Bank, at its election, against any liability, fee, cost or expense (including without limitation reasonable attorneys' fees and expenses) that may be incurred or charged in connection therewith, other than such as may result from the willful misconduct or gross negligence of the Owner Trustee. The Owner Trustee shall not be required to take any action under any Operative Agreement if the Owner Trustee shall reasonably determine, or shall have been advised by counsel, that such action is likely to result in personal liability for which the Owner Trustee has not been and will not be adequately indemnified or is contrary to the terms hereof or of any Operative Agreement to which the Owner Trustee is a party or is otherwise contrary to law. The Owner Trustee shall be under no liability with respect to any action taken or omitted to be taken by the Owner Trustee in accordance with instructions of the Holder pursuant to Section 5.2.

SECTION 5.4 No Duties Except as Specified In Trust Agreement or Instructions.

The Owner Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any Property or any other part of the Trust Estate, or to otherwise take or refrain from taking any action under or in connection with any Operative Agreement to which the Owner Trustee is a party, except as expressly provided by the terms of this Trust Agreement or in written instructions from the Holder received pursuant to Sections 5.1, 5.2 or 8.4 of this Trust Agreement or Sections 8.2(h) or 8.6 of the Participation Agreement or from the Lessee pursuant to Sections 8.5 or 9.2 of the Participation Agreement; and no implied duties or obligations shall be read into this Trust Agreement against the Owner Trustee. The Owner Trustee shall have no duty or obligation to supervise or monitor the performance of the Construction Agent pursuant to the Agency Agreement which for all purposes shall be an independent contractor. The Owner Trustee nevertheless agrees that it will (in its individual capacity and at its own cost and expense), promptly take all action as may be necessary to discharge any Lessor Liens on any part of the Trust Estate.

SECTION 5.5 No Action Except Under Specified Documents or Instructions.

The Owner Trustee agrees that it will not manage, control, use, sell, dispose of or otherwise deal with any Property or any other part of the Trust Estate except (a) as required by the terms of the Operative Agreements, (b) in accordance with the powers granted to, or the authority conferred upon, it



pursuant to this Trust Agreement, (c) in accordance with the express terms hereof or with written instructions from the Holder pursuant to Sections 5.1, 5.2 or 8.4 or (d) from the Lessee pursuant to Sections 8.5 or 9.2 of the Participation Agreement.

SECTION 5.6 Absence of Duties.

(a) Except in accordance with written instructions furnished pursuant to Sections 5.1, 5.2 or 8.4, and without limitation of the generality of Section 5.4, the Owner Trustee shall not have any duty to (i) file, record or deposit any Operative Agreement or any other document, or to maintain any such filing, recording or deposit or to refile,

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rerecord or redeposit any such document; (ii) obtain insurance on any Property or effect or maintain any such insurance, other than to receive and forward to the Holder any notices, policies, certificates or binders furnished to the Owner Trustee pursuant to the Lease; (iii) maintain any Property; (iv) pay or discharge any Tax or any Lien owing with respect to or assessed or levied against any part of the Trust Estate, except as provided in the last sentence of Section 5.4, other than to forward notice of such Tax or Lien received by the Owner Trustee to the Holder; (v) confirm, verify, investigate or inquire into the failure to receive any reports or financial statements of Lessee or any other Person; (vi) inspect any Property any time or ascertain or inquire as to the performance or observance of any of the covenants of Lessee or any other Person under any Operative Agreement with respect to any Property; or (vii) manage, control, use, sell, dispose of or otherwise deal with any Property or any part thereof or any other part of the Trust Estate, except as provided in Section 5.5.

(b) The Owner Trustee, in the exercise or administration of the trusts and powers hereunder, including without limitation its obligations under Section 5.2, may, at the expense of Lessee, employ agents, attorneys, accountants, and auditors and enter into agreements with any of them and the Owner Trustee shall not be liable, either in its individual capacity or in its capacity as the Owner Trustee, for the default or misconduct of any such agents, attorneys, accountants or auditors if such agents, attorneys, accountants or auditors shall have been selected by it in good faith.

ARTICLE VI

THE OWNER TRUSTEE

SECTION 6.1 Acceptance of Trust and Duties.

The Owner Trustee accepts the trust and duties hereby created and agrees to perform the same, but only upon the terms of this Trust Agreement. The Owner Trustee agrees to receive, manage and disburse all moneys constituting part of the Trust Estate actually received by it as the Owner Trustee in accordance with the terms of this Trust Agreement. The Owner Trustee shall not be answerable or accountable under any circumstances, except for (i) its own willful misconduct or gross negligence, (ii) the inaccuracy of any of its representations or warranties contained in Section 6.3 of this Trust Agreement or Section 6.1 of the Participation Agreement, (iii) its failure to perform obligations expressly undertaken by it in the last sentence of Section 5.4 of this Trust Agreement or in Section 8.2(a) of the Participation Agreement, (iv) Taxes based on or measured by any fees, commissions or compensation received by it for acting as the Owner Trustee in connection with any of the transactions contemplated by the Operative Agreements, or (v) its failure to use ordinary care to receive, manage and disburse moneys actually received by it in accordance with the terms of the Operative Agreements.

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SECTION 6.2 Furnishing of Documents.

The Owner Trustee will furnish to the Holder, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, opinions, certificates, financial statements and any other instruments or writings furnished to the Owner Trustee hereunder or under the Operative Agreements, unless by the express terms of any Operative Agreement a copy of the same is required to be furnished by some other Person directly to the Holder, or the Owner Trustee shall have determined that the same has already been furnished to the Holder.

SECTION 6.3 No Representations or Warranties as to the Properties

or Operative Agreements.

THE OWNER TRUSTEE MAKES (i) NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, USE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF ANY PROPERTY (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPERTY (OR ANY PART THEREOF) AND THE OWNER TRUSTEE SHALL NOT BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN OR THE FAILURE OF ANY PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY LEGAL REQUIREMENT except that the Owner Trustee hereby represents, warrants and covenants to the Holder that it will comply with the last sentence of Section 5.4, and (ii) no representation or warranty as to the validity or enforceability of any Operative Agreement or as to the correctness of any statement made by a Person other than the Owner Trustee or the Owner Trustee contained in any thereof, except that the Owner Trustee represents, warrants and covenants to the Holder that this Trust Agreement has been and each of the other Operative Agreements which contemplates execution thereof by the Owner Trustee has been or will be executed and delivered by its officers who are, or will be, duly authorized to execute and deliver documents on its behalf.

SECTION 6.4 No Segregation of Moneys; No Interest.

Except as otherwise provided herein or in any of the other Operative Agreements, moneys received by the Owner Trustee hereunder need not be segregated in any manner except to the extent required by law, and may be deposited under such general conditions as may be prescribed by law, and neither Trust Company nor the Owner Trustee shall be liable for any interest thereon, except as may be agreed to in writing by the Owner Trustee or the Trust Company.

SECTION 6.5 Reliance; Advice of Counsel.

The Owner Trustee shall not incur any liability to any Person in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it in good faith to be signed by the proper party or parties. The Owner Trustee may accept and rely upon a certified

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copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Owner Trustee may for all purposes hereof rely on an Officer's Certificate of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the trusts hereunder, the Owner Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled Persons to be selected and employed by it, and the Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled Persons and not contrary to this Trust Agreement.

SECTION 6.6 Liability With Respect to Documents.

The Owner Trustee, either in its trust or individual capacities, shall not incur any liability to any Person for or in respect of the recitals herein, the validity or sufficiency of this Trust Agreement or for the due execution hereof by the Holder or for the form, character, genuineness, sufficiency, value or validity of any Property or for or in respect of the validity or sufficiency of any of the Operative Agreements and the Owner Trustee, either in its trust or individual capacities, shall in no event assume or incur any liability, duty or obligation to any Person or to the Holder, other than as expressly provided for herein or in any of the other Operative Agreements.

SECTION 6.7 Not Acting In Individual Capacity.

All Persons having any claim against the Owner Trustee by reason of the transactions contemplated by the Operative Agreements shall look only to the Trust Estate (or a part thereof, as the case may be) for payment or satisfaction thereof, except as specifically provided in this Article VI and except to the extent that the Owner Trustee shall otherwise expressly agree in any Operative Agreement to which it is a party, including without limitation Section 6.1 and Section 8.2(a) of the Participation Agreement and the last sentence of Section 5.4 hereof.

SECTION 6.8 Books and Records; Tax Returns.

(a) The Owner Trustee shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all moneys that it may receive hereunder, or under any

other Operative Agreement. The Owner Trustee shall, at the expense of Lessee, file an application with the Internal Revenue Service for a taxpayer identification number with respect to the trust created hereby. The Owner Trustee shall, at the expense of Lessee, prepare or cause to be prepared and the Owner Trustee shall sign and/or file the federal fiduciary tax return with respect to Taxes due and payable by the trust created hereby in connection with the transactions contemplated hereby and by any other Operative Agreement. The Holder shall furnish the Owner Trustee with all such information as may be reasonably required (as such is requested in

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writing by the Owner Trustee) in connection with the preparation of such tax returns. The Owner Trustee shall keep copies of all returns delivered to or filed by it.

(b) The Owner Trustee, either in its trust or individual capacities, shall be under no obligation to appear in, prosecute or defend any action, which in its opinion may require it to incur any out-of-pocket expense or any liability unless the Owner Trustee shall be furnished with such reasonable security and indemnity by Lessee (or by the Bank) against such expense or liability as it may require. The Owner Trustee may, but shall be under no duty to, undertake such action as it may deem necessary at any and all times, without any further action by the Holder to protect one (1) or more of the Properties and the rights and interests of the Holder pursuant to the terms of this Trust Agreement; provided, however, that the Owner Trustee may obtain reimbursement for the out-of-pocket expenses and costs of such actions, undertakings or proceedings from Lessee.

#### ARTICLE VII

##### INDEMNIFICATION OF THE OWNER TRUSTEE

###### SECTION 7.1 Indemnification Generally.

The Owner Trustee is indemnified for matters related to the transactions described herein by Lessee pursuant to Section 11 of the Participation Agreement. Except as may be specifically provided from time to time hereafter in writing by the Holder, the Owner Trustee shall not have any right of indemnification from the Holder with respect to the transactions described herein or in any of the other Operative Agreements.

###### SECTION 7.2 Compensation and Expenses.

Lessee has agreed to pay the fees and expenses of the Owner Trustee and the Commitment Fee as provided in Sections 7.3 and 7.4, respectively, of the Participation Agreement.

#### ARTICLE VIII

##### TERMINATION OF TRUST AGREEMENT

###### SECTION 8.1 Termination of Trust Agreement.

This Trust Agreement and the trusts created hereby shall terminate and the Trust Estate shall, subject to the provisions of the Participation Agreement, the other Operative Agreements and Article IV of this Trust Agreement, be distributed to the Holders, and this Trust Agreement shall be of no further force or effect, upon the earliest of (a) the written request of the Holder

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following the sale or other final disposition by the Owner Trustee of all property constituting part of the Trust Estate and the final distribution by the Owner Trustee of all moneys or other property or proceeds constituting part of the Trust Estate in accordance with the terms hereof; provided, however, that (except as provided for in the Operative Agreements) the Trust Estate shall not be subject to sale or other final disposition by the Owner Trustee prior to the payment in full and discharge of the Loans and all other indebtedness secured by the Credit Documents and the release of the Credit Documents and the Liens granted thereby and the payment in full of the Holder Amount and Holder Yield thereon and all other amounts owing to the Holder under any of the Operative Agreements and (b) fifty (50) years after the date hereof.

###### SECTION 8.2 Termination at Option of the Holder.

Notwithstanding Section 8.1, this Trust Agreement and the trusts created hereby shall terminate and the Trust Estate shall be distributed to the Holder, and this Trust Agreement shall be of no further force and effect, upon the election of the Holder and, so long as no Default or Event of Default shall have occurred and be continuing, with the consent of the Lessee by notice to the Owner Trustee, if such notice shall be accompanied by the written agreement of the Holder assuming all the obligations of the Owner Trustee under or contemplated by the Operative Agreements and all other obligations of the Owner Trustee incurred by it as trustee hereunder. Such written agreement shall be reasonably satisfactory in form and substance to the Owner Trustee and shall release the Owner Trustee from all further obligations of the Owner Trustee hereunder and under the agreements and other instruments mentioned in the preceding sentence.

SECTION 8.3 Termination at Option of the Owner Trustee.

At any time that the Lease shall no longer be in full force and effect and the Bank shall have confirmed in writing to the Owner Trustee that it has received payment in full of the principal of and interest on the Loans and that all other sums due to it under the Operative Agreements shall have been made, then the Holder hereby authorizes the Owner Trustee to: (a) terminate this Trust Agreement and the trusts created hereby and (b) distribute and convey the Trust Estate to the Holder by executing the necessary transfer documents as contemplated by Section 8.4. The exercise of such option by the Owner Trustee shall cause this Trust Agreement to be of no further force and effect and shall release the Owner Trustee from all further obligations of the Owner Trustee hereunder and under the agreements and other instruments mentioned in the preceding sentence.

SECTION 8.4 Actions by the Owner Trustee Upon Termination.

Upon termination of this Trust Agreement and the trusts created hereby pursuant to Sections 8.1, 8.2 or 8.3, the Owner Trustee shall upon notice of such event take such action as may be necessary or as may be requested by the Holder to transfer the Trust Estate to the Holder, including without limitation the execution of instruments of transfer or assignment with respect to any of the Operative Agreements to which the Owner Trustee is a party.

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ARTICLE IX

SUCCESSOR OWNER TRUSTEES, CO-OWNER TRUSTEES  
AND SEPARATE OWNER TRUSTEES

SECTION 9.1 Resignation of the Owner Trustee; Appointment of  
Successor.

(a) The Owner Trustee may resign at any time without cause by giving at least thirty (30) days' prior written notice to each Holder, the Agent and Lessee; provided, however, that such resignation shall not be effective until the acceptance of appointment by a successor Owner Trustee under Section 9.1(b). The Owner Trustee may be removed with or without cause at any time by the Holder with sixty (60) days' prior written notice to the Owner Trustee, a copy of which notice shall be concurrently delivered to the Lessee. Any such removal shall be effective upon the acceptance of appointment by a successor Owner Trustee under Section 9.1(b). In case of the resignation or removal of the Owner Trustee, the Holder may appoint a successor Owner Trustee. In the event the Owner Trustee shall be an individual, his death or incapacity, or termination of employment (whether voluntary or involuntary) with First Security Bank, National Association (or a successor corporate Owner Trustee) shall be treated as a resignation hereunder and shall be effective immediately. If a successor Owner Trustee shall not have been appointed within thirty (30) days after the giving of written notice of such resignation or the delivery of the written instrument with respect to such removal, the Owner Trustee or the Holder may apply to any court of competent jurisdiction to appoint a successor Owner Trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as above provided. Any successor Owner Trustee so appointed by such court shall immediately and without further act be superseded by any successor Owner Trustee appointed as above provided within one (1) year from the date of the appointment by such court.

(b) Any successor Owner Trustee, however appointed, shall execute and deliver to the predecessor Owner Trustee an instrument accepting such appointment, and thereupon such successor Owner Trustee, without further act shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Owner Trustee in the trusts hereunder with like effect as if originally named an Owner Trustee herein; but nevertheless, upon the written request of such successor Owner Trustee such predecessor Owner Trustee shall

execute and deliver an instrument transferring to such successor Owner Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, duties and trusts of such predecessor Owner Trustee, and such predecessor Owner Trustee shall duly assign, transfer, deliver and pay over to such successor Owner Trustee all moneys or other property then held by such predecessor Owner Trustee upon the trusts herein expressed.

(c) Any successor Owner Trustee, however appointed, shall be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least \$50,000,000, if there be such an

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institution willing, able and legally qualified to perform the duties of the Owner Trustee hereunder upon reasonable or customary terms.

(d) Any corporation into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Owner Trustee may be transferred, shall, subject to the terms of Section 9.1(c), be the Owner Trustee under this Trust Agreement without further act.

#### SECTION 9.2 Co-Trustees and Separate Trustees.

Whenever the Owner Trustee or the Holder shall deem it necessary or prudent in order either (a) to conform to any law of any jurisdiction in which all or any part of the Trust Estate shall be situated or to which it may be subject or to make any claim or bring any suit with respect to the Trust Estate or any Operative Agreement, (b) shall be advised by counsel satisfactory to it that it is so necessary or prudent, or (c) the Owner Trustee shall have been directed to do so by the Holder, the Owner Trustee and the Holder shall execute and deliver an agreement supplemental hereto and all other instruments and agreements, and shall take all other action, necessary or proper to constitute one (1) or more Persons who need not meet the requirements of Section 9.1(c) (and the Owner Trustee may appoint one (1) or more of its officers) either as co-trustee or co-trustees (the "Co-Owner Trustee"), jointly with the Owner Trustee, of all or any part of the Trust Estate, or as separate trustee or separate trustees of all or any part of the Trust Estate, and to vest in such Persons, in such capacity, such title to the Trust Estate or any part thereof and such rights or duties as may be necessary or desirable, all for such period and under such terms and conditions as are satisfactory to the Owner Trustee and the Holder. In accordance with the foregoing:

(i) The Owner Trustee shall appoint a Co-Owner Trustee hereunder in part so that if, under any present or future law of any state where any Property is located or of any jurisdiction in which it may be necessary to perform any act in carrying out the trusts herein created, the Owner Trustee or any of its successors may be incompetent or unqualified or incapacitated or unwilling to perform certain acts as such Owner Trustee, then upon the written request of the Owner Trustee of any of its successors received by any Co-Owner Trustee, all of such acts required to be performed in such jurisdiction in the execution of the trust hereby created, shall and will be performed by any Co-Owner Trustee, or any of his successors, in trust acting alone, as if he or such successor had been specifically authorized so to do or had been the sole Owner Trustee hereunder. Any Co-Owner Trustee shall continue to perform such acts until otherwise directed in writing by the Owner Trustee or any of its successors. Any request in writing by the Owner Trustee or any of its successors to the Co-Owner Trustee shall be sufficient warrant for him to take such action as may be so requested.

(ii) Except as it may be deemed necessary for any Co-Owner Trustee or any of his successors solely or jointly to execute the trusts herein created, the Owner Trustee or

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any of its successors shall solely have and exercise the powers, and shall be solely charged with the performance of the duties, hereinbefore declared on the part of the Owner Trustee to be had, exercised and performed; and any Co-Owner Trustee shall not be liable therefor. Any Co-Owner Trustee or any successor to him may delegate to the Owner Trustee or its successor hereunder the exercise of any power, discretion or otherwise, conferred by any provision of this Trust Agreement.

(iii) Any act of the Owner Trustee herein required or

authorized shall and will be jointly or separately performed by the Owner Trustee or its successors hereunder and by any Co-Owner Trustee or any of his successors appointed hereunder, if such joint performance or separate performance shall be necessary to the legality of such act and when so acting all references herein to "First Security Bank, National Association" shall be deemed to be references to such Co-Owner Trustee in its individual capacity and all references to "Owner Trustee" shall be deemed to be references to any Co-Owner Trustee, and such Co-Owner Trustee shall be entitled to all the protection, indemnification, immunity and compensation herein provided to the Owner Trustee acting singly in reference to such acts (subject to the limitations to such a protection, indemnification, immunity and compensation set forth herein).

(iv) The Owner Trustee or its successor in trust shall have and is hereby given the power at any time by an instrument in writing duly executed by a Vice President, to remove any Co-Owner Trustee or his successor, from his position as Co-Owner Trustee hereunder. In the case of death, resignation, removal, incapacity or inability to act hereunder of the Co-Owner Trustee, or his successor as Co-Owner Trustee, any adult citizen of the United States of America may be appointed Co-Owner Trustee hereunder by the person who shall at the time be a Vice President of the corporation then acting as the Owner Trustee hereunder by an instrument in writing duly executed, and under its corporate seal, and, subject to its right to revoke such appointment or to appoint another person, the Owner Trustee shall appoint a successor Co-Owner Trustee, such appointment to be immediately effective in case of the death, resignation, removal or inability or incapacity to act hereunder of the Co-Owner Trustee. In the event a vacancy occurs in the office of the Co-Owner Trustee, either by reason of resignation, removal, incapacity or inability to act and no successor is appointed pursuant to the foregoing provisions within thirty (30) days after such vacancy occurs, the Holder may appoint a successor to the Co-Owner Trustee in the same manner as is provided for the appointment of a successor to the Co-Owner Trustee hereunder.

(v) At any time or times, for the purposes of meeting the legal requirements of any jurisdiction in which any part of the Trust Estate hereunder may at the time be located, or to avoid any violation of law or imposition of taxes not otherwise imposed on the Owner Trustee, or if the Owner Trustee shall deem it desirable for its own protection, the Owner Trustee shall have power to appoint one (1) or more persons (who may be officers of the Owner Trustee either to act as an additional co-trustee, jointly with the Owner Trustee) of all or any part of the Trust Estate hereunder, or of any property constituting part thereof, or to act as separate trustee of any part of the Trust Estate in

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either case with such powers as may be provided in the instrument of appointment and are consistent with the terms hereof, and to vest in such person or persons in the capacity as aforesaid, any property, title, right or power deemed necessary or desirable, subject to the remaining provisions of this Section 9.2.

(vi) Notwithstanding any provision of this Trust Agreement to the contrary, any additional co-trustee shall act upon and be subject to the following terms and conditions:

All rights, powers, duties and obligations conferred or imposed upon the Owner Trustee shall be conferred or imposed solely upon and solely exercised and performed by the Owner Trustee except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Owner Trustee or the Owner Trustee shall be incompetent or unqualified to perform such act or acts or to avoid any violation of law or imposition of taxes not otherwise imposed on the Owner Trustee, or if the Owner Trustee shall deem it desirable for its own protection, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or Co-Owner Trustee.

(vii) No power granted by this Trust Agreement to, or which this Trust Agreement provides may be exercised by, the Owner Trustee in respect of the custody, control and management of moneys may be exercised by any Co-Owner Trustee or any subsequently appointed co-trustee except jointly with, or with the consent in writing of, the Owner Trustee for disbursement or application in accordance with the terms hereof.

(viii) All moneys which may be received or collected by any Co-Owner Trustee or such subsequently appointed co-trustees shall be paid over to the Owner Trustee to be distributed in accordance with this Trust Agreement and the other Operative Agreements.

(ix) Any Co-Owner Trustee, or any subsequently appointed co-trustee to the extent permitted by law, does hereby constitute the Owner Trustee or its successors hereunder his or her agent or attorney in fact, with full power and authority to do any and all acts and things and exercise any and all discretion authorized or permitted by the Co-Owner Trustee or such subsequently appointed co-trustee, in its behalf or in its name.

(x) No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

#### SECTION 9.3 Notice.

At all times that a successor Owner Trustee is appointed pursuant to Section 9.1, an Owner Trustee resigns pursuant to Section 9.1 or the Co-Owner Trustee, a co-trustee or separate trustee, is appointed pursuant to Section 9.2, the Holder shall give notice of such fact within thirty (30) days of its occurrence to Lessee, if the Lease is then in effect.

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### ARTICLE X

#### AMENDMENTS

##### SECTION 10.1 Amendments.

This Trust Agreement may be terminated, amended, supplemented, waived or modified in accordance with Section 12.4 of the Participation Agreement.

##### SECTION 10.2 Limitation on Amendments.

Notwithstanding Section 10.1, the Owner Trustee shall not, without the consent of the Bank execute any amendment that might result in the trusts created hereunder being terminated prior to the satisfaction and discharge of the Lien and security interest of the Security Documents on the Collateral or prior to the payment in full of the principal of, and interest on the Loans and other than in accordance with the terms of the Credit Agreement.

### ARTICLE XI

#### MISCELLANEOUS

##### SECTION 11.1 No Legal Title to Trust Estate in the Holders.

The Holder shall not have legal title to any part of the Trust Estate; provided, however, that Holder has a beneficial interest in the Trust Estate. No transfer, by operation of law or otherwise, of any right, title or interest of the Holder in and to the Trust Estate or hereunder shall operate to terminate this Trust Agreement or the Trust or the trusts hereunder or entitle any successor or transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

##### SECTION 11.2 Sale of a Property by the Owner Trustee is Binding.

Any sale, transfer, or other conveyance of any Property or any part thereof by the Owner Trustee made pursuant to the terms of this Trust Agreement or any other Operative Agreement shall bind the Holder and shall be effective to sell, transfer and convey all right, title and interest of the Owner Trustee and the Holder in and to such Property or any part thereof. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Owner Trustee.

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##### SECTION 11.3 Limitations on Rights of Others.

Nothing in this Trust Agreement whether express or implied, shall be construed to give to any Person, other than the Owner Trustee and the Holder, any legal or equitable right, remedy or claim under or in respect of this Trust Agreement, any covenants, conditions or provisions contained herein or in the Trust Estate; but this Trust Agreement shall be held for the sole and exclusive benefit of the Owner Trustee and the Holder.

SECTION 11.4 Notices.

Unless otherwise expressly specified or permitted by the terms hereof, all notices hereunder shall be given as provided in Section 12.2 of the Participation Agreement.

SECTION 11.5 Severability.

Any provision of this Trust Agreement that may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 11.6 Limitation on the Holders Liability.

The Holder shall not have any liability for the performance of this Trust Agreement except as expressly set forth herein.

SECTION 11.7 Separate Counterparts.

This Trust Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one (1) and the same instrument.

SECTION 11.8 Successors and Assigns.

(a) All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, Trust Company, the Owner Trustee and its successors and assigns and the Holder and its successors and assigns, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by the Holder shall bind the successors and assigns of the Holder.

(b) The Holder may transfer or assign all of its right, title and interest in the Trust Estate, this Trust Agreement and the Certificate in accordance with the requirements of Section 10.1 of the Participation Agreement and pursuant to an assignment agreement in substantially the form of Exhibit B. The Holder shall notify the Owner Trustee and Lessee in writing of the effective date of the transfer or assignment,

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which effective date shall be at least three (3) Business Days after the date of such notification. Upon the occurrence of a permitted assignment pursuant to this Section 11.8(b), the Owner Trustee shall issue a Certificate to the assignee. The Owner Trustee shall not recognize any purported assignment or transfer by the Holder that does not comply with the terms of this Section 11.8 and any such attempted transfer or assignment by the Holder in violation of the terms of this Section 11.8 shall be null and void and of no effect.

SECTION 11.9 Headings.

The headings of the various articles and sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 11.10 Governing Law.

THIS TRUST AGREEMENT HAS BEEN DELIVERED IN, AND SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAW OF, THE STATE OF UTAH.

SECTION 11.11 Performance by the Holders.

Any obligation of the Owner Trustee hereunder or under any Operative Agreement or other document contemplated herein may be performed by the Holder and any such performance shall not be construed as a revocation of the trusts created hereby.

SECTION 11.12 Conflict with Operative Agreements.

If this Trust Agreement (or any instructions given by the Holder pursuant hereto) shall require that any action be taken with respect to any matter and any other Operative Agreement (or any instructions duly given in accordance with the terms thereof) shall require that a different action be taken with respect to such matter, and such actions shall be mutually exclusive, the provisions of such other Operative Agreement, in respect thereof, shall control.



SECTION 11.13 No Implied Waiver.

No term or provision of this Trust Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing entered into as provided in Section 10.1; and any such waiver of the term hereof shall be effective only in the specific instance and for the specific purpose given.

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SECTION 11.14 SUBMISSION TO JURISDICTION; VENUE; ARBITRATION.

THE PROVISIONS OF THE PARTICIPATION AGREEMENT RELATING TO SUBMISSION TO JURISDICTION, VENUE AND ARBITRATION ARE HEREBY INCORPORATED BY REFERENCE HEREIN, MUTATIS MUTANDIS.

[signature pages follow]

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

HOLDER:

FIRST UNION NATIONAL BANK

By: /s/ Eileen McCrickard  
Name: Eileen McCrickard  
Title: Vice President

OWNER TRUSTEE:

FIRST SECURITY BANK, NATIONAL ASSOCIATION

By: /s/ Val T. Orton  
Name: Val T. Orton  
Title: Vice President

(DTSD Realty Trust 1999-1)

EXHIBIT A

FORM OF HOLDER CERTIFICATE

FIRST SECURITY BANK, NATIONAL ASSOCIATION

TRUSTEE UNDER

TRUST AGREEMENT DATED AS OF  
JUNE 2, 1999

HOLDER CERTIFICATE

DTSD REALTY TRUST 1999-1

\_\_\_\_\_, 199\_\_

First Security Bank, National Association, as trustee (herein in such capacity called the "Owner Trustee") under that certain Trust Agreement dated as of June 2, 1999 (herein called the "Trust Agreement", the defined terms therein not otherwise defined herein being used herein with the same meanings), among the several banks and other financial institutions from time to time parties to the Trust Agreement as the Holders and the Owner Trustee, hereby certifies for the benefit of FIRST UNION NATIONAL BANK as follows: (i) this Holder Certificate

is a Holder Certificate referred to in Section 3.1(d) of the Trust Agreement, which Holder Certificate has been issued by the Owner Trustee pursuant to the Trust Agreement and (ii) subject to the prior payment of Notes to the extent provided for in Section 8.7 of the Participation Agreement, and to the assignment, pledge or mortgage of the Trust Estate to secure the Notes as set forth in the applicable Operative Agreements, the holder of this Holder Certificate has a beneficial interest in properties of the Owner Trustee constituting part of the Trust Estate and is entitled to receive as provided in the Trust Agreement, a portion of the Rent received or to be received by the Owner Trustee for the Properties, as well as certain other payments which may be received by the Owner Trustee pursuant to the terms of the Operative Agreements as more particularly set forth therein.

All amounts payable hereunder and under the Trust Agreement shall be paid only from the income and proceeds from the Trust Estate and only to the extent that the Owner Trustee shall have received sufficient income or proceeds from the Trust Estate to make such payments in accordance with the terms of the Trust Agreement, except as specifically provided in Section 6.1 of the Trust Agreement; and the holder hereof, by its acceptance of this Holder Certificate, agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for distribution to the holder hereof as provided in the Trust Agreement and that, except

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as specifically provided in the Trust Agreement, the Owner Trustee is not personally liable to the holder hereof for any amount payable under this Holder Certificate or the Trust Agreement.

The amounts payable to the holder hereof pursuant to the Trust Agreement shall be paid or caused to be paid by the Owner Trustee to, or for the account of, such Holder, or its nominee, by transferring such amount in immediately available funds to a bank institution or banking institutions with bank wire transfer facilities for the account of such Holder or as otherwise instructed in writing from time to time by such Holder.

This Holder Certificate shall mature, and all amounts payable to the holder hereof pursuant to the Trust Agreement shall be due and payable, on the Maturity Date.

This Holder Certificate shall bear a yield on the unpaid amount hereof from time to time outstanding hereunder and under the Trust Agreement at the Holder Yield as provided in the Trust Agreement. The Holder Yield on this Holder Certificate shall be computed as provided in the Trust Agreement and shall be payable at the rates, at the times and from the dates specified in the Trust Agreement.

From and after the execution of the Participation Agreement, the rights of the holder of this Holder Certificate under the Trust Agreement as well as the beneficial interest of the holder of this Holder Certificate in and to the properties of the Owner Trustee constituting part of the Trust Estate, are subject and subordinate to the rights of the holders of the Notes to the extent provided in the applicable Operative Agreements. The Trust Estate has been or will be assigned, pledged and mortgaged to First Union National Bank as security for the Notes and the Holder Certificates. Reference is hereby made to the Trust Agreement, the Participation Agreement, the Credit Agreement, the Security Agreement and the Notes for statements of the rights of the holder of this Holder Certificate and of the rights of the holders of, and the nature and extent of the security for, the Notes, as well as for a statement of the terms and conditions of the trusts created by the Trust Agreement, to all of which terms and conditions the holder hereof agrees by its acceptance of this Holder Certificate.

The holder hereof, by its acceptance of this Holder Certificate, agrees not to transfer this Holder Certificate except in accordance with the terms of the Trust Agreement and the other Operative Agreements.

THIS HOLDER CERTIFICATE SHALL BE INTERPRETED AND ENFORCED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS (AS OPPOSED TO CONFLICTS OF LAW PROVISIONS) AND DECISIONS OF THE STATE OF UTAH. WHENEVER POSSIBLE EACH PROVISION OF THIS HOLDER CERTIFICATE SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS HOLDER CERTIFICATE SHALL BE PROHIBITED BY OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE TO THE EXTENT OF SUCH PROHIBITION OR

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INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISIONS OF THIS HOLDER CERTIFICATE.

IN WITNESS WHEREOF, the undersigned authorized officer of the Owner Trustee has executed this Holder Certificate as of the date first set forth above.

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, except as expressly set forth herein, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1

By:  
Name:  
Title:

EXHIBIT B

FORM OF ASSIGNMENT AND ACCEPTANCE

Reference is made to the Trust Agreement, dated as of June 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Trust Agreement"), among FIRST SECURITY BANK, NATIONAL ASSOCIATION, not in its individual capacity except as stated therein, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1 (the "Owner Trustee" or the "Owner Trustee") and FIRST UNION NATIONAL BANK, as the Holder. Unless otherwise defined herein, terms defined in the Trust Agreement (or pursuant to Section 1 of the Trust Agreement, defined in other agreements) and used herein shall have the meanings given to them in or pursuant to the Trust Agreement.

FIRST UNION NATIONAL BANK (the "Assignor") and [\_\_\_\_\_] (the "Assignee") agree as follows:

1. The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor, as of the Effective Date (as defined below), a 100% interest (the "Assigned Interest") in and to the Assignor's rights and obligations under the Trust Agreement with respect to the facility contained in the Trust Agreement as are set forth on Schedule 1 hereto (the "Assigned Facility"), in a principal amount for the Assigned Facility as set forth on Schedule 1.

2. The Assignor (a) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Trust Agreement or any other Operative Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Trust Agreement, any other Operative Agreement or any other instrument or document furnished pursuant thereto, other than that it has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any such adverse claim; (b) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Owner Trustee or any other obligor or the performance or observance by the Owner Trustee, or any other obligor of any of their respective obligations under the Trust Agreement or any other Operative Agreement or any other instrument or document furnished pursuant hereto or thereto; and (c) attaches the Certificate held by it evidencing the Assigned Facility and requests that the Owner Trustee exchange such Certificate for a new Certificate payable to the Assignee.

3. The Assignee (a) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (b) confirms that it has received copies of the Operative Agreements, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (c) agrees that it will, independently and without reliance upon the Assignor or the Owner Trustee and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Trust Agreement, the other

Operative Agreements or any other instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Owner Trustee to take such action as agent on its behalf and to exercise such powers and discretion under the Trust Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Owner Trustee by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Trust Agreement and the other Operative Agreements to which Assignee is a party and will perform in accordance herewith all the obligations which by the terms of the Trust Agreement and the other Operative Agreements to which Assignee is a party are required to be performed by it as a Holder.

4. The effective date of this Assignment and Acceptance shall be [\_\_\_\_\_, 19\_\_] (the "Effective Date"). Following the execution of this Assignment and Acceptance, it will be delivered to the Owner Trustee for acceptance by it and recording by the Owner Trustee of the Trust Agreement, effective as of the Effective Date (which shall not, unless otherwise agreed to by the Owner Trustee, be earlier than five (5) Business Days after the date of such acceptance and recording by the Owner Trustee).

5. From and after the Effective Date, the Owner Trustee shall make, or cause to be made, all payments in respect of the Assigned Interest (including without limitation payments of Holder Advance, yield, fees and other amounts) to the Assignee whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Owner Trustee for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

6. From and after the Effective Date, (a) the Assignee shall be a party to the Trust Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and under the other Operative Agreements and shall be bound by the provisions thereof and (b) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Trust Agreement and the other Operative Agreements.

7. This Assignment and Acceptance shall be governed by, and construed, INTERPRETED AND ENFORCED in accordance with the laws of the State of UTAH.

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IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance to be executed as of the date first above written by their respective duly authorized officers on Schedule 1 hereto.

FIRST UNION NATIONAL BANK, as Assignor

By:  
Name:  
Title:

[\_\_\_\_\_, \_\_\_\_\_], as Assignee

By:  
Name:  
Title:

Consented To:

DOLLAR TREE DISTRIBUTION, INC., as the  
Construction Agent and as the Lessee

By:  
Name:  
Title:

FIRST SECURITY BANK, NATIONAL  
ASSOCIATION, not individually, but solely  
as the Owner Trustee under the DTSD  
Realty Trust 1999-1

By:  
Name:  
Title:

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SCHEDULE 1  
TO ASSIGNMENT AND ACCEPTANCE  
RELATING TO THE TRUST AGREEMENT,  
DATED AS OF JUNE 2, 1999, (THE "TRUST AGREEMENT")  
AMONG  
FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
NOT INDIVIDUALLY EXCEPT AS STATED THEREIN,  
BUT SOLELY AS THE OWNER TRUSTEE,  
AND  
FIRST UNION NATIONAL BANK,  
AS HOLDER

Name of Assignor: First Union National Bank

Name of Assignee: [\_\_\_\_\_]

Effective Date of Assignment: [\_\_\_\_\_]

Trust Agreement Facility Assigned.	Holder Advance Amount Assigned	Commitment Percentage Assigned
Holder Commitment Amount pursuant to above-referenced Trust Agreement	\$_____	100%

FIRST UNION NATIONAL BANK, as Assignor

By:  
Name:  
Title:

[\_\_\_\_\_] , as Assignee

By:  
Name:  
Title:

SECURITY AGREEMENT

Dated as of June 2, 1999

between

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually, but solely as the Owner Trustee under  
the DTSD Realty Trust 1999-1

and

FIRST UNION NATIONAL BANK,  
as Lender and Holder

and accepted and agreed to by

DOLLAR TREE DISTRIBUTION, INC.

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SECURITY AGREEMENT

This SECURITY AGREEMENT, dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, this "Security Agreement"), is made between FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, not individually, but solely as Owner Trustee under the DTSD Realty Trust 1999-1 (the "Borrower"), FIRST UNION NATIONAL BANK, a national banking association ("Bank"), as lender under the Credit Agreement dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Credit Agreement") by and among the Borrower and Bank, and as holder of the certificates issued pursuant to the Trust Agreement dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Trust Agreement") among the Borrower, in its individual capacity thereunder and in its capacity as Owner Trustee thereunder and Bank. This Security Agreement is accepted and agreed to by DOLLAR TREE DISTRIBUTION, INC., a Virginia corporation.

Pursuant to the Credit Agreement, Bank has agreed to make Loans to the Borrower in an aggregate amount not to exceed \$17,460,000 upon the terms and subject to the conditions set forth therein, to be evidenced by the Notes issued by the Borrower under the Credit Agreement. Pursuant to the Trust Agreement, Bank has agreed to purchase the ownership interests of the Trust created thereby in an aggregate amount not to exceed \$540,000 upon the terms and subject to the conditions set forth therein, to be evidenced by the Certificates issued by the Borrower under the Trust Agreement. The Borrower is, or shall be upon the date of the initial Advance with respect to each Property, the legal and beneficial owner of such Property (except the Borrower may have a ground leasehold interest in certain Properties pursuant to one (1) or more Ground Leases).

It is a condition, among others, to the obligation of Bank to make Loans to the Borrower under the Credit Agreement and to make Holder Advances under the Trust Agreement that the Borrower shall have executed and delivered this Security Agreement.

NOW, THEREFORE, in consideration of the premises and to induce Bank to make Loans under the Credit Agreement and to make Holder Advances under the Trust Agreement, the Borrower hereby agrees with the Bank as follows:

1. Definitions.

(a) As used herein, the following terms shall have the following respective meanings:

"Accounts" shall mean all "accounts," as such term is defined in the Uniform Commercial Code, now owned or hereafter acquired by the Borrower, including without limitation (i) all accounts receivable, other receivables, book debts and other forms of

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obligations now owned or hereafter received or acquired by or belonging or owing to the Borrower, whether arising out of goods sold or leased or services rendered by it or from any other transaction (including without limitation any such obligations which may be characterized as an account under the Uniform Commercial Code), (ii) all of the Borrower's rights in, to and under all purchase orders or receipts now owned or hereafter acquired by it for goods or services, (iii) all of the Borrower's rights to any goods represented by any of the foregoing (including without limitation unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (iv) all monies due or to become due to the Borrower under all purchase orders and contracts for the sale or lease of goods or the performance of services or both by the Borrower (whether or not yet earned by performance on the part of the Borrower) now or hereafter in existence, including without limitation the right to receive the proceeds of said purchase orders and contracts, and (v) all collateral security and guarantees of any kind, now or hereafter in existence, given by any Person with respect to any of the foregoing.

"Chattel Paper" shall mean any and all "chattel paper," as such term is defined in the Uniform Commercial Code, now owned or hereafter acquired by the Borrower, wherever located.

"Documents" shall mean any and all "documents", as such term is defined in the Uniform Commercial Code, now owned or hereafter acquired by the Borrower, wherever located, including without limitation each bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.

"General Intangibles" shall mean any and all "general intangibles," as such term is defined in the Uniform Commercial Code, now owned or hereafter acquired by the Borrower, including without limitation all contracts, undertakings, or agreements in or under which the Borrower may now or hereafter have any right (other than any right evidenced by Chattel Paper, Documents or Instruments), title or interest, including without limitation any agreements relating to the terms of payment or the terms of performance of any Account.

"Instruments" shall mean any and all "instruments", as such term is defined in the Uniform Commercial Code, now owned or hereafter acquired by the Borrower, wherever located, including without limitation all certificated securities, all certificates of deposit, and all notes and other, without limitation, evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

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"Investment Property" shall mean any and all "investment property," as such term is defined in the Uniform Commercial Code, now owned or hereafter acquired by the Borrower, wherever located.

"Lessee" shall mean Dollar Tree Distribution, Inc., a Virginia corporation, its successors, permitted assigns and permitted transferees.

"Obligations" shall mean any and all obligations now existing or hereafter arising under the Credit Agreement, the Notes, the Trust Agreement, the Certificates and/or any other Operative Agreement.

(b) Capitalized terms used but not otherwise defined in this Security Agreement shall have the respective meanings specified in the Credit Agreement or Appendix A to the Participation Agreement dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof, the "Participation Agreement") among Lessee, the various parties thereto from time to time, as Guarantors, the Borrower, and the Bank.

(c) The rules of usage set forth in Appendix A to the Participation Agreement shall apply to this Agreement.

2. Grant of Security Interest.

To secure payment of all the amounts advanced under the Credit Agreement in connection with the Notes, all the amounts advanced or contributed under the Trust Agreement in connection with the Certificates and all other amounts now or hereafter owing to the Bank, the Holder or under any other Operative Agreement, THE BORROWER HEREBY CONVEYS, GRANTS, ASSIGNS, TRANSFERS, HYPOTHECATES, MORTGAGES AND SETS OVER TO THE BANK, A FIRST PRIORITY SECURITY INTEREST IN AND LIEN ON THE TRUST ESTATE, whether now existing or hereafter acquired INCLUDING WITHOUT LIMITATION THE FOLLOWING:

(a) all right, title and interest of the Borrower in and to the Operative Agreements now existing or hereafter acquired by the Borrower (including without limitation all rights to payment and indemnity rights of the Borrower under the Participation Agreement) (all of the foregoing in this paragraph (a) being referred to as the "Rights in Operative Agreements");

(b) all right, title and interest of the Borrower in and to all of the Equipment;

(c) all right, title and interest of the Borrower in and to all of the Fixtures;

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(d) all the estate, right, title, claim or demand whatsoever of the Borrower, in possession or expectancy, in and to each Property, Fixture or Equipment or any part thereof;

(e) all right, title and interest of the Borrower in and to all substitutes, modifications and replacements of, and all additions, accessions and improvements to, the Fixtures and Equipment, subsequently acquired or leased by the Borrower or constructed, assembled or placed by the Borrower on any Property, immediately upon such acquisition, lease, construction, assembling or placement, and in each such case, without any further conveyance, assignment or other act by the Borrower;

(f) all right, title and interest of the Borrower in, to and under books and records relating to or used in connection with the operation of one (1) or more Properties or any part thereof; all rights of the Borrower to the payment of money and all property; and all rights in and to any causes of action or choses in action now or hereafter existing in favor of the Borrower and all rights to any recoveries therefrom;

(g) all right, title and interest of the Borrower in and to all unearned premiums under insurance policies now held or subsequently obtained by the Lessee relating to one (1) or more Properties and the Borrower's interest in and to all proceeds of any insurance policies maintained by or for the benefit of the Borrower, including without limitation any right to collect and receive such proceeds; and all awards and



other compensation, including without limitation the interest payable thereon and any right to collect and receive the same, made to the present or any subsequent owner of any Property for the taking by eminent domain, condemnation or otherwise, of all or any part of any Property or any easement or other right therein;

(h) all right, title and interest of the Borrower in and to (i) all consents, licenses, certificates and other governmental approvals relating to construction, completion, use or operation of any Property or any part thereof and (ii) all Plans and Specifications relating to any Property;

(i) all right, title and interest of the Borrower in and to all Rent and all other rents, payments, purchase prices, receipts, revenues, issues and profits payable under the Lease or pursuant to any other lease with respect to any Property;

(j) all right, title and interest of the Borrower in and to all Instruments and Documents;

(k) all right, title and interest of the Borrower in and to all General Intangibles;

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(l) all right, title and interest of the Borrower in and to all Chattel Paper (including without limitation all rights under the Lease) and each Ground Lease;

(m) all right, title and interest of the Borrower in and to all money, cash or cash equivalent and bank accounts;

(n) all right, title and interest of the Borrower in and to all Accounts;

(o) all right, title and interest of the Borrower in and to all proceeds of letters of credit issued in favor of the Borrower in connection with any Property; and

(p) all right, title and interest of the Borrower in and to all proceeds, both cash and noncash, of any of the foregoing.

(All of the foregoing property and rights and interests now owned or held or subsequently acquired by the Borrower and described in the foregoing clauses (a) through (p) are collectively referred to as the "Trust Property").

TO HAVE AND TO HOLD the Trust Property and the rights and privileges hereby granted unto the Bank its successors and assigns for the uses and purposes set forth, until all of the obligations owing to the Bank under the Operative Agreements are paid in full; provided, that EXCLUDED from the Trust Property at all times and in all respects shall be all Excepted Payments.

### 3. Payment of Obligations.

The Borrower shall pay all Obligations in accordance with the terms of the Credit Agreement, the Notes, the Trust Agreement, the Certificates and the other Operative Agreements and perform each term to be performed by it under the Credit Agreement, the Notes, the Trust Agreement, the Certificates and the other Operative Agreements.

### 4. Other Covenants.

At any time and from time to time, upon the written request of the Bank, and at the expense of the Borrower (with funds provided by the Lessee for such purpose), the Borrower will promptly and duly execute and deliver such further instruments and documents and take such further actions as the Agent reasonably may request for the purposes of obtaining or preserving the full benefits of this Security Agreement and of the rights and powers granted by this Security Agreement.

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### 5. Default; Remedies.

(a) If a Credit Agreement Event of Default has occurred and is continuing:

(i) the Bank, in addition to all other remedies available at law or in equity, shall have the right forthwith

to enter upon any Property (or any other place where any component of any Property is located at such time) without charge, and take possession of all or any portion of the Trust Property, and to re-let the Trust Property and receive the rents, issues and profits thereof, to make repairs and to apply said rentals and profits, after payment of all necessary or proper charges and expenses, on account of the amounts hereby secured (subject to the Excepted Payments); and

(ii) the Bank, shall, as a matter of right, be entitled to the appointment of a receiver for the Trust Property, and the Borrower hereby consents to such appointment and waives notice of any application therefor.

(b) If a Credit Agreement Event of Default has occurred and is continuing, the Bank may proceed by an action at law, suit in equity or other appropriate proceeding, to protect and enforce its rights, whether for the foreclosure of the Lien of this Security Agreement, or for the specific performance of any agreement contained herein or for an injunction against the violation of any of the terms hereof. The proceeds of any sale of any of the Trust Property shall be applied pursuant to Section 8.7 of the Participation Agreement. In addition, the Bank may proceed under Section 11 hereof.

(c) The Borrower hereby waives the benefit of all appraisal, valuation, stay, extension and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale of the Trust Property or any portion thereof or interest therein.

#### 6. Remedies Not Exclusive.

The Bank shall be entitled to enforce payment of the indebtedness and performance of the Obligations and to exercise all rights and powers under this Security Agreement or under any of the other Operative Agreements or other agreements or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by deed of trust, mortgage, security agreement, pledge, Lien, assignment or otherwise. Neither the acceptance of this Security Agreement nor its enforcement, shall prejudice or in any manner affect the Bank's right to realize upon or enforce any other security now or hereafter held by the Bank, it being agreed that the Bank shall be entitled to enforce this Security Agreement and any other security now or hereafter held by the Bank in such order and manner as the Bank may determine in its absolute discretion. No remedy conferred hereunder or under any other Operative Agreement upon or reserved to the Bank is intended to be exclusive of any other remedy herein or therein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or thereunder or now or hereafter existing

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at law or in equity or by statute. Every power or remedy given by any of the Operative Agreements to the Bank or to which it may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Bank. In no event shall the Bank, in the exercise of the remedies provided in this Security Agreement (including without limitation in connection with the assignment of Rents to the Bank, or the appointment of a receiver and the entry of such receiver onto all or any part of the Land), be deemed a "mortgagee in possession" or a "pledgee in possession", and the Bank shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

#### 7. Performance by the Bank of the Borrowers Obligations.

If the Borrower fails to perform or comply with any of its agreements contained herein the Bank, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement. The expenses of the Bank incurred in connection with actions undertaken as provided in this Section 7, together with interest thereon at a rate per annum equal to the Overdue Rate, from the date of payment by the Bank to the date reimbursed by the Borrower, shall be payable by the Borrower (with funds provided by the Lessee for such purpose) to the Bank on demand and constitutes part of the Obligations secured hereby.

#### 8. Duty of the Bank.

The Bank's sole duty with respect to the custody, safekeeping and physical preservation of any Trust Property in its possession, under Section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as the Bank deals with similar property for its own account. Neither the Bank nor any of its respective directors, officers, employees, shareholders, partners or agents shall be liable for failure to demand, collect or realize upon any of the Trust Property or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Trust Property upon

the request of the Borrower or any other Person or to take any other action whatsoever with regard to the Trust Property or any part thereof.

9. Powers Coupled with an Interest.

All powers, authorizations and agencies contained in this Security Agreement are coupled with an interest and are irrevocable until this Security Agreement is terminated and the Liens created hereby are released.

10. Execution of Financing Statements.

Pursuant to Section 9-402 of the Uniform Commercial Code, the Borrower authorizes the Bank at the expense of the Borrower (such amounts to be paid with funds provided by the Lessee for such purpose) to file financing statements with respect to the Trust Property under this Security Agreement without the signature of the Borrower in such form and in such filing offices as the Bank reasonably determines appropriate to perfect the security interests of the Bank under

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this Security Agreement. A carbon, photographic or other reproduction of this Security Agreement shall be sufficient as a financing statement for filing in any jurisdiction. For purposes of such financing statement, the Borrower shall be deemed to be the debtor, and the Bank shall be deemed to be the secured party. The address of the Borrower is 79 South Main Street, Salt Lake City, Utah 84111, Attention: Val T. Orton, Vice President, and the address of the Bank is First Union National Bank, c/o First Union Capital Markets Group, DC6, 301 South College Street, Charlotte, North Carolina 28288-0166, Attention: Christy Lee Foster, Capital Markets Services.

11. Security Agreement Under Uniform Commercial Code.

(a) It is the intention of the parties hereto that this Security Agreement as it relates to matters of the grant, perfection and priority of security interests the subject hereof, shall constitute a security agreement within the meaning of the Uniform Commercial Code of the States in which the Trust Property is located. If a Credit Agreement Event of Default shall occur, then in addition to having any other right or remedy available at law or in equity, the Bank may proceed under the applicable Uniform Commercial Code and exercise such rights and remedies as may be provided to a secured party by such Uniform Commercial Code with respect to all or any portion of the Trust Property which is personal property (including without limitation taking possession of and selling such property). If the Bank shall elect to proceed under the Uniform Commercial Code, then fifteen (15) days' notice of sale of the personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Bank shall include, but not be limited to, attorneys' fees and legal expenses. At the Bank's request, the Borrower shall assemble such personal property and make it available to the Bank at a place designated by the Bank which is reasonably convenient to both parties.

(b) The Borrower, upon request by the Bank from time to time, shall execute, acknowledge and deliver to the Bank one (1) or more separate security agreements, in form satisfactory to the Bank, covering all or any part of the Trust Property and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as the Bank may request in order to perfect, preserve, maintain, continue or extend the security interest under, and the priority of the Liens granted by, this Security Agreement and such security instrument. The Borrower further agrees to pay to the Bank (with funds provided by the Lessee for such purpose) on demand all costs and expenses incurred by the Bank in connection with the preparation, execution, recording, filing and re-filing of any such document and all reasonable costs and expenses of any record searches for financing statements the Bank shall reasonably require. The filing of any financing or continuation statements in the records relating to personal property or chattels shall not be construed as in any way impairing the right of the Bank to proceed against any property encumbered by this Security Agreement.

12. [Intentionally Left Blank].

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13. Notices.

All notices required or permitted to be given under this Security Agreement shall be in writing and delivered as provided in Section 12.2 of the Participation Agreement.

14. Severability.

Any provision of this Security Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

15. Amendment in Writing; No Waivers; Cumulative Remedies.

(a) None of the terms or provisions of this Security Agreement may be waived, amended, supplemented or otherwise modified except in accordance with the terms of Section 12.4 of the Participation Agreement.

(b) No failure to exercise, nor any delay in exercising, on the part of the Bank, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Bank of any right or remedy hereunder on any one (1) occasion shall not be construed as a bar to any right or remedy which the Bank would otherwise have on any future occasion.

(c) The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

16. Section Headings.

The section headings used in this Security Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

17. Successors and Assigns.

This Security Agreement shall be binding upon the successors of the Borrower, and the Borrower shall not assign any of its rights or obligations hereunder or with respect to any of the Trust Property without the prior written consent of the Bank. This Security Agreement shall inure to the benefit of the Bank and its successors and assigns.

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18. The Borrowers Waiver of Rights.

Except as otherwise set forth herein, to the fullest extent permitted by law, the Borrower waives the benefit of all laws now existing or that may subsequently be enacted providing for (a) any appraisalment before sale of any portion of the Trust Property, (b) any extension of the time for the enforcement of the collection of the indebtedness or the creation or extension of a period of redemption from any sale made in collecting such debt and (c) exemption of any portion of the Trust Property from attachment, levy or sale under execution or exemption from civil process. Except as otherwise set forth herein, to the fullest extent the Borrower may do so, the Borrower agrees that the Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, exemption, extension or redemption, or requiring foreclosure of this Security Agreement before exercising any other remedy granted hereunder and the Borrower, for the Borrower and its successors and assigns, and for any and all Persons ever claiming any interest in the Trust Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the Obligations and marshalling in the event of foreclosure of the Liens hereby created.

19. GOVERNING LAW.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 11(a) HEREOF, THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NORTH CAROLINA.

20. Obligations Are Without Recourse.

The provisions of the Participation Agreement relating to limitations on liability are hereby incorporated by reference herein, Mutatis Mutandis.

21. Partial Release; Full Release.

The Bank may release for such consideration as it may require any

portion of the Trust Property without (as to the remainder of the Trust Property) in any way impairing or affecting the Lien, security interest and priority herein provided for the Bank compared to any other Lien holder or secured party. Further, the Bank shall execute and deliver to the Borrower such documents and instruments as may be required to release the Lien and security interest created by this Security Agreement with respect to the Properties as provided in Section 8.8 of the Participation Agreement or to grant the easements and permit the other matters provided for in Section 8.5 of the Participation Agreement.

22. Miscellaneous.

(a) This Security Agreement is one (1) of the documents which create Liens and security interests that secure payment and performance of the Obligations. The

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Bank, at its election, may commence or consolidate in a single action all proceedings to realize upon all such Liens and security interests. The Borrower hereby waives (i) any objections to the commencement or continuation of an action to foreclose the Lien of this Security Agreement or exercise of any other remedies hereunder based on any action being prosecuted or any judgment entered with respect to the Obligations or any Liens or security interests that secure payment and performance of the Obligations and (ii) any objections to the commencement of, continuation of, or entry of a judgment in any such other action based on any action or judgment connected to this Security Agreement. In case of a foreclosure sale, the Trust Property may be sold, at the Agent's election, in one (1) parcel or in more than one (1) parcel and the Bank is specifically empowered (without being required to do so, and in its sole and absolute discretion) to cause successive sales of portions of the Trust Property to be held.

(b) This Security Agreement may not be amended, waived, discharged or terminated except in accordance with Section 12.4 of the Participation Agreement.

(c) THE PROVISIONS OF THE PARTICIPATION AGREEMENT RELATING TO SUBMISSION TO JURISDICTION, VENUE AND ARBITRATION ARE HEREBY INCORPORATED BY REFERENCE HEREIN, MUTATIS MUTANDIS.

23. Conflicts with Participation Agreement.

Notwithstanding any other provision hereof, in the event of any conflict between the terms of this Security Agreement and the Participation Agreement, the terms of the Participation Agreement shall govern.

24. LESSEE AS A PARTY.

LESSEE HAS EXECUTED THIS SECURITY AGREEMENT FOR THE PURPOSE OF SUBJECTING TO THE SECURITY INTERESTS GRANTED HEREUNDER ALL OF ITS RIGHT, TITLE, ESTATE AND INTEREST, IF ANY, IN AND TO THE TRUST PROPERTY TO SECURE ALL OBLIGATIONS OF ALL CREDIT PARTIES UNDER THE OPERATIVE AGREEMENTS. ACCORDINGLY, LESSEE HEREBY GRANTS TO THE BANK A SECURITY INTEREST IN AND TO ALL OF ITS RIGHT, TITLE, ESTATE AND INTEREST, IF ANY, IN AND TO THE TRUST PROPERTY (TO THE EXTENT LESSEE HAS ANY RIGHT, TITLE OR INTEREST THEREIN AND WITHOUT REGARD TO ANY LANGUAGE IN SECTION 2 OR THE DEFINITION OF "TRUST PROPERTY" OR ANY DEFINITION OF ANY ITEM CONSTITUTING THE TRUST PROPERTY WHICH OTHERWISE WOULD LIMIT THE TRUST PROPERTY TO THE RIGHT, TITLE AND INTEREST OF THE BORROWER THEREIN) TO SECURE ALL OBLIGATIONS OF ALL CREDIT PARTIES UNDER THE OPERATIVE AGREEMENTS. LESSEE ACKNOWLEDGES AND AGREES THAT, UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, THE BANK SHALL HAVE THE RIGHT TO EXERCISE ANY OR ALL OF ITS

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REMEDIES HEREUNDER AS AGAINST ANY SUCH RIGHT, TITLE, ESTATE OR INTEREST OF LESSEE IN OR TO THE TRUST PROPERTY.

[The remainder of this page has been left blank intentionally.]

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IN WITNESS WHEREOF, each of the undersigned have caused the Security Agreement to be duly executed and delivered as of the date first above written.

FIRST SECURITY BANK, NATIONAL  
ASSOCIATION, not individually, but  
solely as the Owner Trustee under the  
DTSD Realty Trust 1999-1

By: /s/ Val T. Orton  
Name: Val T. Orton  
Title: Vice President

FIRST UNION NATIONAL BANK,  
as Lender and Holder

By: /s/ Eileen McCrickard  
Name: eileen McCrickard  
Title: Vice President

Accepted and Agreed to:

DOLLAR TREE DISTRIBUTION, INC.

By: /s/ Frederick C. Coble  
Name: Frederick C. Coble  
Title: Sr. V.P.

LEASE AGREEMENT

Dated as of June 2, 1999

between

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually,  
but solely as the Owner Trustee  
under the DTSD Realty Trust 1999-1,  
as Lessor

and

DOLLAR TREE DISTRIBUTION, INC.,  
as Lessee

This Lease Agreement is subject to a security interest in favor of First Union National Bank ("Bank") under a Security Agreement dated as of June 2, 1999 between First Security Bank, National Association, not individually, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1 and the Bank, as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof. This Lease Agreement has been executed in several counterparts. To the extent, if any, that this Lease Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease Agreement may be created through the transfer or possession of any counterpart other than the original counterpart containing the receipt therefor executed by the Bank on the signature page hereof.

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LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, this "Lease") is between FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, having its principal office at 79 South Main Street, Salt Lake City, Utah 84111, not individually, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1, as lessor (the "Lessor"), and DOLLAR TREE DISTRIBUTION, INC., a Virginia corporation, having its principal place of business at 500 Volvo Parkway, Chesapeake, Virginia 23320, as lessee (the "Lessee").

W I T N E S S E T H:

A. WHEREAS, subject to the terms and conditions of the Participation Agreement and the Agency Agreement, Lessor will (i) purchase or ground lease various parcels of real property, some of which will (or may) have existing Improvements thereon, from one (1) or more third parties designated by Lessee and (ii) fund the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Properties by the Construction Agent; and

B. WHEREAS, the Term shall commence with respect to each Property upon the Property Closing Date with respect thereto; provided, Basic Rent with respect thereto shall not be payable until the applicable Rent Commencement Date; and

C. WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, each Property;

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

ARTICLE I

1.1 Definitions.

For purposes of this Lease, capitalized terms used in this Lease and not otherwise defined herein shall have the meanings assigned to them in Appendix A to that certain Participation Agreement dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof, the "Participation Agreement") among Lessee, the various parties thereto from time to time, as the Guarantors, Lessor and First Union National Bank, as Lender and Holder ("Bank"). Unless otherwise indicated, references in this Lease to articles, sections, paragraphs, clauses, appendices, schedules and exhibits are to the same contained in this Lease.

1.2 Interpretation.

The rules of usage set forth in Appendix A to the Participation Agreement shall apply to this Lease.

ARTICLE II

2.1 Property.

Subject to the terms and conditions hereinafter set forth and contained in the respective Lease Supplement relating to each Property, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, each Property.

2.2 Lease Term.

The term of this Lease with respect to each Property (the "Term") shall begin upon the earlier to occur of (a) the Completion Date for such Property and (b) the date any Agency Agreement Event of Default shall occur (in each case the "Commencement Date") and shall end on the fifth annual anniversary of the Initial Closing Date, unless the Term is earlier terminated;

provided, this Lease shall be in full force and effect from and after the Initial Closing Date, notwithstanding that the Term for any particular Property shall not commence until the Commencement Date for such Property. Notwithstanding the foregoing, Lessee shall not be obligated to pay Basic Rent until the Rent Commencement Date with respect to such Property.

2.3 Title.

Each Property is leased to Lessee without any representation or warranty, express or implied, by Lessor and subject to the rights of parties in possession (if any), the existing state of title (including without limitation the Permitted Liens) and all applicable Legal Requirements. Lessee shall in no event have any recourse against Lessor for any defect in Lessor's title to any Property or any interest of Lessee therein other than for Lessor Liens.

2.4 Lease Supplements.

On the Property Closing Date for each Property, Lessee and Lessor shall each execute and deliver a Lease Supplement for the Property to be leased effective as of the Commencement Date for such Property in substantially the form of Exhibit A hereto.

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ARTICLE III

3.1 Rent.

(a) Lessee shall pay Basic Rent in arrears on each Payment Date, and on any date on which this Lease shall terminate with respect to any or all Properties during the Term; provided, however, with respect to each individual Property Lessee shall have no obligation to pay Basic Rent with respect to such Property until the Rent Commencement Date with respect to such Property (notwithstanding that Basic Rent for such Property shall accrue from and including the Scheduled Interest Payment Date immediately preceding such Rent Commencement Date).

(b) Basic Rent shall be due and payable in lawful money of the United States and shall be paid by wire transfer of immediately available funds on the due date therefor (or within the applicable grace period) to such account or accounts at such bank or banks as Lessor shall from time to time direct.

(c) Lessee's inability or failure to take possession of all or any portion of any Property when delivered by Lessor, whether or not attributable to any act or omission of Lessor, the Construction Agent, Lessee or any other Person or for any other reason whatsoever, shall not delay or otherwise affect Lessee's obligation to pay Rent for such Property in accordance with the terms of this Lease.

(d) Lessee shall make all payments of Rent prior to 12:00 Noon, Charlotte, North Carolina time, on the applicable date for payment of such amount.

3.2 Payment of Basic Rent.

Basic Rent shall be paid absolutely net to Lessor or its designee, so that this Lease shall yield to Lessor the full amount thereof, without setoff, deduction or reduction.

3.3 Supplemental Rent.

Lessee shall pay to the Person entitled thereto any and all Supplemental Rent when and as the same shall become due and payable, and if Lessee fails to pay any Supplemental Rent within three (3) days after the same is due, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of Basic Rent. All such payments of Supplemental Rent shall be in the full amount thereof, without setoff, deduction or reduction. Lessee shall pay to the appropriate Person, as Supplemental Rent due and owing to such Person, among other things, on demand, (a) any and all payment obligations (except for amounts payable as Basic Rent) owing from time to time under the Operative Agreements by any Person to the Bank or any other Person, (b) interest at the applicable Overdue Rate on any installment of Basic Rent not paid when due (subject to the applicable grace period) for the period for which the same shall be overdue and on any payment of Supplemental Rent not paid when due or demanded by the appropriate Person (subject to any

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applicable grace period) for the period from the due date or the date of any such demand, as the case may be, until the same shall be paid and (c) amounts referenced as Supplemental Rent obligations pursuant to Section 8.3 of the Participation Agreement. It shall be an additional Supplemental Rent obligation of Lessee to pay to the appropriate Person all rent and other amounts when such become due and owing from time to time under each Ground Lease and without the necessity of any notice from Lessor with regard thereto. The expiration or other termination of Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of Lessee with respect to Supplemental Rent. Unless expressly provided otherwise in this Lease, in the event of any failure on the part of Lessee to pay and discharge any Supplemental Rent as and when due, Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent.

#### 3.4 Performance on a Non-Business Day.

If any Basic Rent is required hereunder on a day that is not a Business Day, then such Basic Rent shall be due on the corresponding Scheduled Interest Payment Date. If any Supplemental Rent is required hereunder on a day that is not a Business Day, then such Supplemental Rent shall be due on the next succeeding Business Day.

#### 3.5 Rent Payment Provisions.

Lessee shall make payment of all Basic Rent and Supplemental Rent when due (subject to the applicable grace periods) regardless of whether any of the Operative Agreements pursuant to which same is calculated and is owing shall have been rejected, avoided or disavowed in any bankruptcy or insolvency proceeding involving any of the parties to any of the Operative Agreements. Such provisions of such Operative Agreements and their related definitions are incorporated herein by reference and shall survive any termination, amendment or rejection of any such Operative Agreements.

### ARTICLE IV

#### 4.1 Taxes; Utility Charges.

From and after the Commencement Date for any Property, Lessee shall pay or cause to be paid all Impositions with respect to such Property and/or the use, occupancy, operation, repair, access, maintenance or operation thereof and all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents, utilities and operating expenses of any kind or type used in or on any Property and related real property during the Term. Prior to the Commencement Date for any Property, Lessor (at the direction of the Bank) shall make the payments referenced in the foregoing sentence (but only to the extent amounts are available therefor with respect to the Available Commitments and the Available Holder Commitments or the Bank increases the amount of Available Commitments and Available Holder Commitments to fund such costs). Upon Lessor's request, Lessee shall provide from

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time to time Lessor with evidence of all such payments referenced in the foregoing sentence. Lessee shall be entitled to receive any credit or refund with respect to any Imposition or utility charge paid by Lessee. Unless an Event of Default shall have occurred and be continuing, the amount of any credit or refund received by Lessor on account of any Imposition or utility charge paid by Lessee, net of the costs and expenses incurred by Lessor in obtaining such credit or refund, shall be promptly paid over to Lessee. All charges for Impositions or utilities imposed with respect to any Property for a period during which this Lease expires or terminates shall be adjusted and prorated on a daily basis between Lessor and Lessee, and each party shall pay or reimburse the other for such party's pro rata share thereof.

### ARTICLE V

#### 5.1 Quiet Enjoyment.

Subject to the rights of Lessor contained in Sections 17.2, 17.3 and 20.3 and the other terms of this Lease and the other Operative Agreements and so long as no Event of Default shall have occurred and be continuing, Lessee shall peaceably and quietly have, hold and enjoy each Property for the applicable Term, free of any claim or other action by Lessor or anyone rightfully claiming by, through or under Lessor (other than Lessee) with respect to any matters arising from and after the applicable Commencement Date.

### ARTICLE VI

#### 6.1 Net Lease.

This Lease shall constitute a net lease, and the obligations of Lessee hereunder are absolute and unconditional. Lessee shall pay all operating expenses arising out of the use, operation and/or occupancy of each Property. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall Lessee be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to the Rent, nor shall the obligations of Lessee hereunder be affected (except as expressly herein permitted and by performance of the obligations in connection therewith) for any reason whatsoever, including without limitation by reason of: (a) any damage to or destruction of any Property or any part thereof; (b) any taking of any Property or any part thereof or interest therein by Condemnation or otherwise; (c) any prohibition, limitation, restriction or prevention of Lessee's use, occupancy or enjoyment of any Property or any part thereof, or any interference with such use, occupancy or enjoyment by any Person or for any other reason; (d) any title defect, Lien or any matter affecting title to any Property; (e) any eviction by paramount title or otherwise; (f) any default by Lessor hereunder; (g) any action for bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding relating to or affecting the Bank, Lessor, Lessee or any Governmental Authority; (h) the impossibility or illegality of performance by Lessor, Lessee or both; (i) any action of any Governmental Authority or any other Person; (j) Lessee's acquisition of ownership of all or part of any Property; (k) breach of any warranty or representation with

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respect to any Property or any Operative Agreement; (l) any defect in the condition, quality or fitness for use of any Property or any part thereof; or (m) any other cause or circumstance whether similar or dissimilar to the foregoing and whether or not Lessee shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of Lessee hereunder shall be covenants, agreements and obligations that are separate and independent from any obligations of Lessor hereunder and shall continue unaffected unless such covenants, agreements and obligations shall have been modified or terminated in accordance with an express provision of this Lease. Lessor and Lessee acknowledge and agree that the provisions of this Section 6.1 have been specifically reviewed and subject to negotiation.

#### 6.2 No Termination or Abatement.

Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, dissolution, or other proceeding affecting any Person or any Governmental Authority, or any action with respect to this Lease or any Operative Agreement which may be taken by any trustee, receiver or liquidator of any Person or any Governmental Authority or by any court with respect to any Person, or any Governmental Authority. Lessee hereby waives all right (a) to terminate or surrender this Lease (except as permitted under the terms of the Operative Agreements) or (b) to avail itself of any abatement, suspension, deferment, reduction, setoff, counterclaim or defense with respect to any Rent. Lessee shall remain obligated under this Lease in accordance with its terms and Lessee hereby waives any and all rights now or hereafter conferred by statute or otherwise to modify or to avoid strict compliance with its obligations under this Lease. Notwithstanding any such statute or otherwise, Lessee shall be bound by all of the terms and conditions contained in this Lease.

### ARTICLE VII

#### 7.1 Ownership of the Properties.

(a) Lessor and Lessee intend that (i) for financial accounting purposes with respect to Lessee (A) this Lease will be treated as an "operating lease" pursuant to Statement of Financial Accounting Standards No. 13, as amended, (B) Lessor will be treated as the owner and lessor of each Property and (C) Lessee will be treated as the lessee of each Property, but (ii) for federal and all state and local income tax purposes, bankruptcy purposes, regulatory purposes, commercial law and real estate purposes and all other purposes (A) this Lease will be treated as a financing arrangement and (B) Lessee will be treated as the owner of the Properties and will be entitled to all tax benefits ordinarily available to owners of property similar to the Properties for such tax purposes. Notwithstanding the foregoing, neither party hereto has made, or shall be deemed to have made, any representation or warranty as to the availability of any of the foregoing treatments under applicable accounting rules, tax, bankruptcy, regulatory, commercial or real estate law or under any other set of rules. Lessee shall claim the cost recovery deductions associated with each Property, and Lessor shall not, to the extent not

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prohibited by Law, take on its tax return a position inconsistent with Lessee's claim of such deductions.

(b) For all purposes other than as set forth in Section 7.1(a)(i), Lessor and Lessee intend this Lease to constitute a finance lease and not a true lease. In order to secure the obligations of Lessee now existing or hereafter arising under any and all Operative Agreements, Lessee hereby conveys, grants, assigns, transfers, hypothecates, mortgages and sets over to Lessor, for the benefit of all Financing Parties, a first priority security interest (but subject to the security interest in the assets granted by Lessee in favor of the Bank in accordance with the Security Agreement) in and lien on all right, title and interest of Lessee (now owned or hereafter acquired) in and to all Properties, to the extent such is personal property and irrevocably grants and conveys a lien, deed of trust and mortgage on all right, title and interest of Lessee (now owned or hereafter acquired) in and to all Properties to the extent such is real property. Lessor and Lessee further intend and agree that, for the purpose of securing the obligations of Lessee and/or the Construction Agent now existing or hereafter arising under the Operative Agreements, (i) this Lease shall be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code respecting each of the Properties and all proceeds (including without limitation insurance proceeds thereof) to the extent such is personal property and an irrevocable grant and conveyance of a lien, deed of trust and mortgage on each of the Properties and all proceeds (including without limitation insurance proceeds thereof) to the extent such is real property; (ii) the acquisition of title by Lessor (or to the extent applicable, a leasehold interest pursuant to a Ground Lease) in each Property referenced in Article II constitutes a grant by Lessee to Lessor of a security interest, lien, deed of trust and mortgage in all of Lessee's right, title and interest in and to each Property and all proceeds (including without limitation insurance proceeds thereof) of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property, whether in the form of cash, investments, securities or other property, and an assignment of all rents, profits and income produced by each Property; and (iii) notifications to Persons holding such property, and acknowledgments, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of Lessee shall be deemed to have been given for the purpose of perfecting such lien, security interest, mortgage lien and deed of trust under applicable law. Lessee shall promptly take such actions as Lessor may reasonably request (including without limitation the filing of Uniform Commercial Code Financing Statements, Uniform Commercial Code Fixture Filings and memoranda (or short forms) of this Lease and the various Lease Supplements) to ensure that the lien, security interest, mortgage lien and deed of trust in each Property and the other items referenced above will be deemed to be a perfected lien, security interest, mortgage lien and deed of trust of first priority under applicable law and will be maintained as such from the Property Closing Date for each such Property and thereafter throughout the Term.

#### ARTICLE VIII

##### 8.1 Condition of the Properties.

LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING EACH PROPERTY "AS-IS WHERE-IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY LESSOR (EXCEPT THAT LESSOR SHALL KEEP EACH PROPERTY FREE AND CLEAR OF LESSOR LIENS) AND IN EACH CASE SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF (IF ANY), (C) ANY STATE OF FACTS REGARDING ITS PHYSICAL CONDITION OR WHICH AN ACCURATE SURVEY MIGHT SHOW, (D) ALL APPLICABLE LEGAL REQUIREMENTS AND (E) VIOLATIONS OF LEGAL REQUIREMENTS WHICH MAY EXIST ON THE DATE HEREOF AND/OR THE DATE OF THE APPLICABLE LEASE SUPPLEMENT. NEITHER LESSOR NOR THE BANK HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) (EXCEPT THAT LESSOR SHALL KEEP EACH PROPERTY FREE AND CLEAR OF LESSOR LIENS) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE, VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF ANY PROPERTY (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPERTY (OR ANY PART THEREOF), AND NEITHER LESSOR NOR THE BANK SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREON OR THE FAILURE OF ANY PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY LEGAL REQUIREMENT. LESSEE HAS OR PRIOR TO THE BASIC TERM COMMENCEMENT DATE WILL HAVE BEEN AFFORDED FULL OPPORTUNITY TO INSPECT EACH PROPERTY AND THE IMPROVEMENTS THEREON (IF ANY), IS OR WILL BE (INsofar AS LESSOR AND THE BANK ARE CONCERNED) SATISFIED WITH THE RESULTS OF ITS INSPECTIONS AND IS ENTERING INTO THIS LEASE SOLELY ON THE BASIS OF THE RESULTS OF ITS OWN INSPECTIONS, AND ALL RISKS INCIDENT TO THE MATTERS DESCRIBED IN THE PRECEDING SENTENCE, AS BETWEEN LESSOR AND THE BANK, ON THE ONE (1) HAND, AND LESSEE, ON THE OTHER HAND, ARE TO BE BORNE BY LESSEE.

## 8.2 Possession and Use of the Properties.

(a) At all times during the Term with respect to each Property, such Property shall be a Permitted Facility and shall be used by Lessee in the ordinary course of its business. Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Properties as contemplated by this Lease. Lessee shall not commit or permit any waste of the Properties or any part thereof.

(b) The address stated in Section 29.1 of this Lease is the principal place of business and chief executive office of Lessee (as such terms are used in Section 9-103(3) of the Uniform Commercial Code of any applicable jurisdiction), and Lessee will provide

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Lessor with prior written notice of any change of location of its principal place of business or chief executive office. Regarding a particular Property, each Lease Supplement correctly identifies the initial location of the related Equipment (if any) and Improvements (if any) and contains an accurate legal description for the related parcel of Land or a copy of the Ground Lease (if any). The Equipment and Improvements respecting each particular Property will be located only at the location identified in the applicable Lease Supplement.

(c) Lessee will not attach or incorporate any item of Equipment to or in any other item of equipment or personal property or to or in any real property in a manner that could give rise to the assertion of any Lien on such item of Equipment by reason of such attachment or the assertion of a claim that such item of Equipment has become a fixture and is subject to a Lien in favor of a third party that is prior to the Liens thereon created by the Operative Agreements.

(d) On the Property Closing Date for each Property, Lessor and Lessee shall execute a Lease Supplement in regard to such Property which shall contain an Equipment Schedule that has a general description of the Equipment which shall comprise the Property, an Improvement Schedule that has a general description of the Improvements which shall comprise the Property and a legal description of the Land to be leased hereunder (or in the case of any Property subject to a Ground Lease to be subleased hereunder) as of the Commencement Date for such Property. Each Property subject to a Ground Lease shall be deemed to be ground subleased from Lessor to Lessee as of the Commencement Date, and such ground sublease shall be in effect until this Lease is terminated or expires, in each case in accordance with the terms and provisions hereof. Lessee shall satisfy and perform all obligations imposed on Lessor under each Ground Lease. Simultaneously with the execution and delivery of each Lease Supplement, such Equipment, Improvements, Land, ground subleasehold interest, all additional Equipment and all additional Improvements which are financed under the Operative Agreements after the Commencement Date and the remainder of such Property shall be deemed to have been accepted by Lessee for all purposes of this Lease and to be subject to this Lease.

(e) At all times from the Property Closing Date for each Property and thereafter during the Term with respect to such Property, Lessee will comply with all obligations under and (to the extent no Event of Default exists and provided that such exercise will not impair the value, utility or remaining useful life of such Property) shall be permitted to exercise all rights and remedies under, all operation and easement agreements and related or similar agreements applicable to such Property.

## 8.3 Integrated Properties.

On the Rent Commencement Date for each Property, Lessee shall, at its sole cost and expense, cause such Property and the applicable property subject to a Ground Lease to constitute (and for the duration of the Term shall continue to constitute) all of the equipment,

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facilities, rights, other personal property and other real property necessary or appropriate to operate, utilize, maintain and control a Permitted Facility in a commercially reasonable manner.

## ARTICLE IX

### 9.1 Compliance With Legal Requirements, Insurance Requirements and Manufacturers Specifications and Standards.

Subject to the terms of Article XIII relating to permitted contests, Lessee, at its sole cost and expense, shall (a) comply with all applicable Legal Requirements (including without limitation all Environmental Laws) and all Insurance Requirements relating to the Properties, (b) procure, maintain and comply with all licenses, permits, orders, approvals, consents and other authorizations required for the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Properties, and (c) comply with all manufacturer's specifications and standards, including without limitation the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Properties, whether or not compliance therewith shall require structural or extraordinary changes in any Property or interfere with the use and enjoyment of any Property unless the failure to procure, maintain and comply with such items identified in subparagraphs (b) and (c), individually or in the aggregate, shall not and could not reasonably be expected to have a Material Adverse Effect. Lessor agrees to take such actions as may be reasonably requested by Lessee in connection with the compliance by Lessee of its obligations under this Section 9.1.

#### ARTICLE X

##### 10.1 Maintenance and Repair; Return.

(a) Lessee, at its sole cost and expense, shall maintain each Property in good condition, repair and working order (ordinary wear and tear excepted) and in the repair and condition as when originally delivered to Lessee and make all necessary repairs thereto and replacements thereof, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or foreseen or unforeseen, in each case as required by Section 9.1 and on a basis consistent with the operation and maintenance of properties or equipment comparable in type and function to the applicable Property, such that such Property is capable of being immediately utilized by a third party and in compliance with standard industry practice subject, however, to the provisions of Article XV with respect to Casualty and Condemnation.

(b) Lessee shall not move or relocate any component of any Property beyond the boundaries of the Land (comprising part of such Property) described in the applicable Lease Supplement, except for the temporary removal of Equipment and other personal property for repair or replacement.

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(c) If any component of any Property becomes worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use, Lessee, at its own expense, will within a reasonable time replace such component with a replacement component which is free and clear of all Liens (other than Permitted Liens and Lessor Liens) and has a value, utility and useful life at least equal to the component replaced (assuming the component replaced had been maintained and repaired in accordance with the requirements of this Lease). All such replacement components which are added to any Property shall immediately become the property of (and title thereto shall vest in) Lessor and shall be deemed incorporated in such Property and subject to the terms of this Lease as if originally leased hereunder.

(d) Upon reasonable advance notice, Lessor and its agents shall have the right to inspect each Property and all maintenance records with respect thereto at any reasonable time during normal business hours but shall not, in the absence of an Event of Default, materially disrupt the business of Lessee.

(e) Lessee shall cause to be delivered to Lessor (at Lessee's sole expense) one (1) or more reappraisals of Property as Lessor may request if any one (1) of Lessor, the Trust Company or the Bank is required pursuant to any applicable Legal Requirement to obtain such reappraisals.

(f) Lessor shall under no circumstances be required to build any improvements or install any equipment on any Property, make any repairs, replacements, alterations or renewals of any nature or description to any Property, make any expenditure whatsoever in connection with this Lease or maintain any Property in any way. Lessor shall not be required to maintain, repair or rebuild all or any part of any Property, and Lessee waives the right to (i) require Lessor to maintain, repair, or rebuild all or any part of any Property, or (ii) make repairs at the expense of Lessor pursuant to any Legal Requirement, Insurance Requirement, contract, agreement, covenant, condition or restriction at any time in effect.

(g) Lessee shall, upon the expiration or earlier termination

of this Lease with respect to a Property, if Lessee shall not have exercised its Purchase Option with respect to such Property and purchased such Property, surrender such Property (i) to Lessor pursuant to the exercise of the applicable remedies upon the occurrence of a Lease Event of Default or (ii) pursuant to the second paragraph of Section 22.1(a) hereof, to Lessor or the third party purchaser, as the case may be, subject to Lessee's obligations under this Lease (including without limitation the obligations of Lessee at the time of such surrender under Sections 9.1, 10.1(a) through (f), 10.2, 11.1, 12.1, 22.1 and 23.1).

#### 10.2 Environmental Inspection.

If Lessee has not given notice of exercise of its Purchase Option on the Expiration Date pursuant to Section 20.1 or for whatever reason Lessee does not purchase a Property in

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accordance with the terms of this Lease, then not more than one hundred twenty (120) days nor less than sixty (60) days prior to the Expiration Date, Lessee at its expense shall cause to be delivered to Lessor a Phase I environmental site assessment recently prepared (no more than thirty (30) days prior to the date of delivery) by an independent recognized professional reasonably acceptable to Lessor, and in form, scope and content reasonably satisfactory to Lessor.

### ARTICLE XI

#### 11.1 Modifications.

(a) Lessee at its sole cost and expense, at any time and from time to time without the consent of Lessor may make modifications, alterations, renovations, improvements and additions to any Property or any part thereof and substitutions and replacements therefor (collectively, "Modifications"), and Lessee shall make any and all Modifications required to be made pursuant to all Legal Requirements, Insurance Requirements and manufacturer's specifications and standards; provided, that: (i) no Modification shall materially impair the value, utility or useful life of any Property from that which existed immediately prior to such Modification; (ii) each Modification shall be done expeditiously and in a good and workmanlike manner; (iii) no Modification shall adversely affect the structural integrity of any Property; (iv) to the extent required by Section 14.2(a), Lessee shall maintain builders' risk insurance at all times when a Modification is in progress; (v) subject to the terms of Article XIII relating to permitted contests, Lessee shall pay all costs and expenses and discharge any Liens arising with respect to any Modification; (vi) each Modification shall comply with the requirements of this Lease (including without limitation Sections 8.2 and 10.1); and (vii) no Improvement shall be demolished or otherwise rendered unfit for use unless Lessee shall finance the proposed replacement Modification outside of this lease facility; provided, further, Lessee shall not make any Modification (unless required by any Legal Requirement) to the extent any such Modification, individually or in the aggregate, shall or could reasonably be expected to have a Material Adverse Effect. All Modifications shall immediately and without further action upon their incorporation into the applicable Property (1) become property of Lessor, (2) be subject to this Lease and (3) be titled in the name of Lessor. Lessee shall not remove or attempt to remove any Modification from any Property. Each Ground Lease for a Property shall expressly provide for the provisions of the foregoing sentence. Lessee, at its own cost and expense, will pay for the repairs of any damage to any Property caused by the removal or attempted removal of any Modification.

(b) The construction process provided for in the Agency Agreement is acknowledged by Lessor to be consistent with and in compliance with the terms and provisions of this Article XI.

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### ARTICLE XII

#### 12.1 Warranty of Title.

(a) Lessee hereby acknowledges and shall cause title in each Property (including without limitation all Equipment, all Improvements, all replacement components to each Property and all Modifications) immediately and without further action to vest in and become the property of Lessor and to be subject to the terms of this Lease (provided, respecting each Property subject to a Ground Lease, Lessor's interest therein is acknowledged to be a leasehold interest pursuant to



such Ground Lease) from and after the date hereof or such date of incorporation into any Property. Lessee agrees that, subject to the terms of Article XIII relating to permitted contests, Lessee shall not directly or indirectly create or allow to remain, and shall promptly discharge at its sole cost and expense, any Lien, defect, attachment, levy, title retention agreement or claim upon any Property, any component thereof or any Modifications or any Lien, attachment, levy or claim with respect to the Rent or with respect to any amounts held by Lessor or the Bank pursuant to any Operative Agreement, other than Permitted Liens and Lessor Liens. Lessee shall promptly notify Lessor in the event it receives actual knowledge that a Lien other than a Permitted Lien or Lessor Lien has occurred with respect to a Property, the Rent or any other such amounts, and Lessee represents and warrants to, and covenants with, Lessor that the Liens in favor of Lessor and/or the Bank created by the Operative Agreements are (and until the Financing Parties under the Operative Agreements have been paid in full shall remain) first priority perfected Liens subject only to Permitted Liens and Lessor Liens. At all times subsequent to the Property Closing Date respecting a Property, Lessee shall (i) cause a valid, perfected, first priority Lien on each applicable Property to be in place in favor of the Bank and (ii) file, or cause to be filed, all necessary documents under the applicable real property law and Article 9 of the Uniform Commercial Code to perfect such title and Liens.

(b) Nothing contained in this Lease shall be construed as constituting the consent or request of Lessor, expressed or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to any Property or any part thereof. NOTICE IS HEREBY GIVEN THAT LESSOR IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING A PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO ANY PROPERTY.

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#### ARTICLE XIII

##### 13.1 Permitted Contests Other Than in Respect of Indemnities.

Except to the extent otherwise provided for in Section 11 of the Participation Agreement, Lessee, on its own or on Lessor's behalf but at Lessee's sole cost and expense, may contest, by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Legal Requirement, Imposition or utility charge payable pursuant to Section 4.1 or any Lien, attachment, levy, encumbrance or encroachment, and Lessor agrees not to pay, settle or otherwise compromise any such item, provided, that (a) the commencement and continuation of such proceedings shall suspend the collection of any such contested amount from, and suspend the enforcement thereof against, the applicable Properties, Lessor and the Bank; (b) there shall not be imposed a Lien (other than Permitted Liens and Lessor Liens) on any Property and no part of any Property nor any Rent would be in any danger of being sold, forfeited, lost or deferred; (c) at no time during the permitted contest shall there be a risk of the imposition of criminal liability or material civil liability on Lessor or the Bank for failure to comply therewith; and (d) in the event that, at any time, there shall be a material risk of extending the application of such item beyond the end of the Term, then Lessee shall deliver to Lessor an Officer's Certificate certifying as to the matters set forth in clauses (a), (b) and (c) of this Section 13.1. Lessor, at Lessee's sole cost and expense, shall execute and deliver to Lessee such authorizations and other documents as may reasonably be required in connection with any such contest and, if reasonably requested by Lessee, shall join as a party therein at Lessee's sole cost and expense.

##### 13.2 Impositions, Utility Charges, Other Matters; Compliance with Legal Requirements.

Except with respect to Impositions, Legal Requirements, utility charges and such other matters referenced in Section 13.1 which are the subject of ongoing proceedings contesting the same in a manner consistent with the requirements of Section 13.1, Lessee shall cause (a) all Impositions, utility charges and such other matters to be timely paid, settled or compromised, as appropriate, with respect to each Property and (b) each Property to comply with all applicable Legal Requirements.

#### ARTICLE XIV

##### 14.1 Public Liability and Workers Compensation Insurance.

During the Term for each Property, Lessee shall procure and carry, at Lessee's sole cost and expense, commercial general liability and umbrella liability insurance for claims for injuries or death sustained by persons or damage to property while on such Property or respecting the Equipment and such other public liability coverages as are then customarily carried by similarly situated companies conducting business similar to that conducted by Lessee. Prior to the Commencement Date for any Property, Lessee shall procure and carry all such

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insurance referenced in the immediately preceding sentence, but Lessor (at the direction of the Bank) shall pay the costs and expenses incurred respecting the insurance referenced in the foregoing sentence (but only to the extent amounts are available therefor with respect to the Available Commitments and the Available Holder Commitments or the Bank increases the amount of Available Commitments and Available Holder Commitments to fund such costs and expenses). Such insurance shall be on terms and in amounts that are no less favorable than insurance maintained by Lessee with respect to similar properties and equipment that it owns and are then carried by similarly situated companies conducting business similar to that conducted by Lessee, and in no event shall have a minimum combined single limit per occurrence coverage (i) for commercial general liability of less than \$1,000,000 and (ii) for umbrella liability of less than \$2,000,000. The policies shall name Lessee as the insured and shall be endorsed to name Lessor and the Bank as additional insureds. The policies shall also specifically provide that such policies shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which Lessor or the Bank may have in force. In the operation of the Properties, Lessee shall comply with applicable workers' compensation laws and protect Lessor and the Bank against any liability under such laws.

#### 14.2 Permanent Hazard and Other Insurance.

(a) During the Term for each Property, Lessee shall keep such Property insured against all risk of physical loss or damage by fire and other risks and shall maintain builders' risk insurance during construction of any Improvements or Modifications in each case in amounts no less than the then current replacement value of such Property (assuming that such Property was in the condition required by the terms of this Lease immediately prior to such loss) and on terms that (i) are no less favorable than insurance covering other similar properties owned by Lessee and (ii) are then carried by similarly situated companies conducting business similar to that conducted by Lessee. The policies shall name Lessee as the insured and shall be endorsed to name each of Lessor and the Bank as an additional insured and as a loss payee, to the extent of their respective interests; provided, so long as no Event of Default exists, any loss payable under the insurance policies required by this Section for losses up to \$1,000,000 will be paid to Lessee. Prior to the Commencement Date for any Property, Lessee shall procure and carry all such insurance referenced in this Section 14.2(a), but Lessor (at the direction of the Bank) shall pay the costs and expenses incurred respecting the insurance referenced in this Section 14.2(a) (but only to the extent amounts are available therefor with respect to the Available Commitments and the Available Holder Commitments or the Bank increases the amount of Available Commitments and Available Holder Commitments to fund such costs and expenses).

(b) If, during the Term with respect to a Property the area in which such Property is located is designated a "flood-prone" area pursuant to the Flood Disaster Protection Act of 1973, or any amendments or supplements thereto or is in a zone designated A or V, then Lessee shall comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973. In addition, Lessee will fully comply with the requirements of the National Flood Insurance Act of 1968 and the Flood

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Disaster Protection Act of 1973, as each may be amended from time to time, and with any other Legal Requirement, concerning flood insurance to the extent that it applies to any such Property. During the Term, Lessee shall, in the operation and use of each Property, maintain workers' compensation insurance consistent with that carried by similarly situated companies conducting business similar to that conducted by Lessee and containing minimum liability limits of no less than \$100,000. In the operation of each Property, Lessee shall comply with workers' compensation laws applicable to Lessee, and protect Lessor and the Bank against any liability under such laws. Prior to the Commencement Date for any Property, Lessee shall procure and carry all such insurance referenced in this Section 14.2(b), but Lessor (at the

direction of the Bank) shall pay the costs and expenses incurred respecting the insurance referenced in this Section 14.2(b) (but only to the extent amounts are available therefor with respect to the Available Commitments and the Available Holder Commitments or the Bank increases the amount of Available Commitments and Available Holder Commitments to fund such costs and expenses).

#### 14.3 Coverage.

(a) As of the date of this Lease and annually thereafter during the Term, Lessee shall furnish the Bank (on behalf of Lessor) with certificates prepared by the insurers or insurance broker of Lessee showing the insurance required under Sections 14.1 and 14.2 to be in effect, naming (to the extent of their respective interests) Lessor and the Bank as additional insureds and loss payees and evidencing the other requirements of this Article XIV. All such insurance shall be at the cost and expense of Lessee and provided by nationally recognized, financially sound insurance companies having an A or better rating by A.M. Best's Key Rating Guide. Lessee shall cause such certificates to include a provision for thirty (30) days' advance written notice by the insurer to the Bank (on behalf of Lessor) in the event of cancellation or material alteration of such insurance. If an Event of Default has occurred and is continuing and the Bank (on behalf of Lessor) so requests, Lessee shall deliver to the Bank (on behalf of Lessor) copies of all insurance policies required by Sections 14.1 and 14.2.

(b) Lessee agrees that the insurance policy or policies required by Sections 14.1, 14.2(a) and 14.2(b) shall include an appropriate clause pursuant to which any such policy shall provide that it will not be invalidated should Lessee or any Contractor, as the case may be, waive, at any time, any or all rights of recovery against any party for losses covered by such policy or due to any breach of warranty, fraud, action, inaction or misrepresentation by Lessee or any Person acting on behalf of Lessee. Lessee hereby waives any and all such rights against Lessor and the Bank to the extent of payments made to any such Person under any such policy.

(c) Neither Lessor nor Lessee shall carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Article XIV, except that Lessor may carry separate liability insurance at Lessor's sole cost so long as (i) Lessee's insurance is designated as primary and in no event excess or

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contributory to any insurance Lessor may have in force which would apply to a loss covered under Lessee's policy and (ii) each such insurance policy will not cause Lessee's insurance required under this Article XIV to be subject to a coinsurance exception of any kind.

(d) Lessee shall pay as they become due all premiums for the insurance required by Section 14.1 and Section 14.2, shall renew or replace each policy prior to the expiration date thereof or otherwise maintain the coverage required by such Sections without any lapse in coverage.

### ARTICLE XV

#### 15.1 Casualty and Condemnation.

(a) Subject to the provisions of the Agency Agreement and this Article XV and Article XVI (in the event Lessee delivers, or is obligated to deliver or is deemed to have delivered, a Termination Notice), and prior to the occurrence and continuation of a Default or an Event of Default, Lessee shall be entitled to receive (and Lessor hereby irrevocably assigns to Lessee all of Lessor's right, title and interest in) any condemnation proceeds, award, compensation or insurance proceeds under Sections 14.2(a) or 14.2(b) hereof to which Lessee or Lessor may become entitled by reason of their respective interests in a Property (i) if all or a portion of such Property is damaged or destroyed in whole or in part by a Casualty or (ii) if the use, access, occupancy, easement rights or title to such Property or any part thereof is the subject of a Condemnation; provided, however, if a Default or an Event of Default shall have occurred and be continuing or if such award, compensation or insurance proceeds shall exceed \$1,000,000, then such award, compensation or insurance proceeds shall be paid directly to Lessor or, if received by Lessee, shall be held in trust for Lessor, and shall be paid over by Lessee to Lessor and held in accordance with the terms of this paragraph (a). All amounts held by Lessor hereunder on account of any award, compensation or insurance proceeds either paid directly to Lessor or turned over to Lessor shall be deposited in an interest-bearing account and shall be

held as security for the performance of Lessee's obligations hereunder and under the other Operative Agreements and when all such obligations of Lessee with respect to such matters (and all other obligations of Lessee which should have been satisfied pursuant to the Operative Agreements as of such date) have been satisfied, all amounts so held by Lessor (including interest earned on such amounts) shall be paid over to Lessee.

(b) Lessee may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any award, compensation or insurance payment on account of any such Casualty or Condemnation and shall pay all expenses thereof. At Lessee's reasonable request, and at Lessee's sole cost and expense, Lessor and the Bank shall participate in any such proceeding, action, negotiation, prosecution or adjustment. Lessor

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and Lessee agree that this Lease shall control the rights of Lessor and Lessee in and to any such award, compensation or insurance payment.

(c) If Lessee shall receive notice of a Casualty or a Condemnation of a Property or any interest therein where damage to the affected Property is estimated to equal or exceed fifty percent (50%) of the Property Cost of such Property, Lessee shall give notice thereof to Lessor promptly after Lessee's receipt of such notice. In the event such a Casualty or Condemnation occurs (regardless of whether Lessee gives notice thereof), then Lessee shall be deemed to have delivered a Termination Notice to Lessor and the provisions of Sections 16.1 and 16.2 shall apply.

(d) In the event of a Casualty or a Condemnation (regardless of whether notice thereof must be given pursuant to paragraph (c)), this Lease shall terminate with respect to the applicable Property in accordance with Section 16.1 if Lessee, within thirty (30) days after such occurrence, delivers to Lessor a notice to such effect.

(e) If pursuant to this Section 15.1 this Lease shall continue in full force and effect following a Casualty or Condemnation with respect to the affected Property, Lessee shall, at its sole cost and expense (subject to reimbursement in accordance with Section 15.1(a)) promptly and diligently repair any damage to the applicable Property caused by such Casualty or Condemnation in conformity with the requirements of Sections 10.1 and 11.1, using the as-built Plans and Specifications or manufacturer's specifications for the applicable Improvements, Equipment or other components of the applicable Property (as modified to give effect to any subsequent Modifications, any Condemnation affecting the applicable Property and all applicable Legal Requirements), so as to restore the applicable Property to the same or a greater remaining economic value, useful life, utility, condition, operation and function as existed immediately prior to such Casualty or Condemnation (assuming all maintenance and repair standards have been satisfied). In such event, title to the applicable Property shall remain with Lessor.

(f) In no event shall a Casualty or Condemnation affect Lessee's obligations to pay Rent pursuant to Article III.

(g) Notwithstanding anything to the contrary set forth in Section 15.1(a) or Section 15.1(e), if during the Term with respect to a Property a Casualty occurs with respect to such Property or Lessee receives notice of a Condemnation with respect to such Property, and following such Casualty or Condemnation, the applicable Property cannot reasonably be restored, repaired or replaced on or before the date six (6) months prior to the Expiration Date or the date nine (9) months after the occurrence of such Casualty or Condemnation (if such Casualty or Condemnation occurs during the Term) to the same or a greater remaining economic value, useful life, utility, condition, operation and function as existed immediately prior to such Casualty or Condemnation (assuming all maintenance and repair standards have been satisfied) or on or before such day such Property is not in fact so restored, repaired or replaced, then Lessee shall be required to exercise its Purchase Option for such Property on the next Payment Date

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(notwithstanding the limits on such exercise contained in Section 20.2) and pay Lessor the Termination Value for such Property; provided, if any Default or Event of Default has occurred and is continuing, Lessee shall also promptly (and in any event within three (3) Business Days) pay Lessor any award, compensation or insurance proceeds received on account of any Casualty or Condemnation with respect to any Property;

provided, further, that if no Default or Event of Default has occurred and is continuing, any Excess Proceeds shall be paid to Lessee. If a Default or an Event of Default has occurred and is continuing and any Loans, Holder Advances or other amounts are owing with respect thereto, then any Excess Proceeds (to the extent of any such Loans, Holder Advances or other amounts owing with respect thereto) shall be paid to Lessor, held as security for the performance of Lessee's obligations hereunder and under the other Operative Agreements and applied to such obligations upon the exercise of remedies in connection with the occurrence of an Event of Default, with the remainder of such Excess Proceeds in excess of such Loans, Holder Advances and other amounts owing with respect thereto being distributed to the Lessee.

#### 15.2 Environmental Matters.

Promptly upon Lessee's actual knowledge of the presence of Hazardous Substances in any portion of any Property or Properties in concentrations and conditions that constitute an Environmental Violation and which, in the reasonable opinion of Lessee, the cost to undertake any legally required response, clean up, remedial or other action will or might result in a cost to Lessee of more than \$50,000. Lessee shall notify Lessor in writing of such condition. In the event of any Environmental Violation (regardless of whether notice thereof must be given), Lessee shall, not later than thirty (30) days after Lessee has actual knowledge of such Environmental Violation, either deliver to Lessor a Termination Notice with respect to the applicable Property or Properties pursuant to Section 16.1, if applicable, or, at Lessee's sole cost and expense, promptly and diligently undertake and diligently complete any response, clean up, remedial or other action (including without limitation the pursuit by Lessee of appropriate action against any off-site or third party source for contamination) necessary to remove, cleanup or remediate the Environmental Violation in accordance with all Environmental Laws. Any such undertaking shall be timely completed in accordance with prudent industry standards. If Lessee does not deliver a Termination Notice with respect to such Property pursuant to Section 16.1, Lessee shall, upon completion of remedial action by Lessee, cause to be prepared by a reputable environmental consultant acceptable to Lessor a report describing the Environmental Violation and the actions taken by Lessee (or its agents) in response to such Environmental Violation, and a statement by the consultant that the Environmental Violation has been remedied in full compliance with applicable Environmental Law. Not less than sixty (60) days prior to any time that Lessee elects to cease operations with respect to any Property or to remarket any Property pursuant to Section 20.1 hereof or any other provision of any Operative Agreement, Lessee at its expense shall cause to be delivered to Lessor a Phase I environmental site assessment respecting such Property recently prepared (no more than thirty (30) days prior to the date of delivery) by an independent recognized professional acceptable to Lessor in its reasonable discretion and in form, scope and content satisfactory to Lessor in its reasonable discretion. Notwithstanding any other provision of any Operative Agreement, if Lessee fails to comply with the foregoing

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obligation regarding the Phase I environmental site assessment, Lessee shall be obligated to purchase such Property for its Termination Value and shall not be permitted to exercise (and Lessor shall have no obligation to honor any such exercise) any rights under any Operative Agreement regarding a sale of such Property to a Person other than Lessee or any Affiliate of Lessee.

#### 15.3 Notice of Environmental Matters.

Promptly, but in any event within five (5) Business Days from the date Lessee has actual knowledge thereof, Lessee shall provide to Lessor written notice of any pending or threatened claim, action or proceeding involving any Environmental Law or any Release on or in connection with any Property or Properties. All such notices shall describe in reasonable detail the nature of the claim, action or proceeding and Lessee's proposed response thereto. In addition, Lessee shall provide to Lessor, within five (5) Business Days of receipt, copies of all material written communications with any Governmental Authority relating to any Environmental Law in connection with any Property. Lessee shall also promptly provide such detailed reports of any such material environmental claims as may reasonably be requested by Lessor. Actual knowledge of Lessee shall be deemed actual knowledge of an officer at the level of Vice President or above.

### ARTICLE XVI

#### 16.1 Termination Upon Certain Events.

If Lessee has delivered, or is deemed to have delivered, written notice of a termination of this Lease with respect to the applicable Property to Lessor in the form described in Section 16.2(a) (a "Termination Notice") pursuant to the provisions of this Lease, then following the applicable Casualty, Condemnation or Environmental Violation, this Lease shall terminate

with respect to the affected Property on the applicable Termination Date.

16.2 Procedures.

(a) A Termination Notice shall contain: (i) notice of termination of this Lease with respect to the affected Property on a Payment Date not more than sixty (60) days after Lessor's receipt of such Termination Notice (the "Termination Date"); and (ii) a binding and irrevocable agreement of Lessee to pay the Termination Value for the applicable Property and purchase such Property on such Termination Date.

(b) On each Termination Date, Lessee shall pay to Lessor the Termination Value for the applicable Property, and Lessor shall convey such Property or the remaining portion thereof, if any, to Lessee (or Lessee's designee), all in accordance with Section 20.2.

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ARTICLE XVII

17.1 Lease Events of Default.

If any one (1) or more of the following events (each a "Lease Event of Default") shall occur:

(a) Lessee shall fail to make payment of (i) any Basic Rent (except as set forth in clause (ii)) within fifteen (15) days after the same has become due and payable or (ii) any Termination Value, on the date any such payment is due and payable, or any payment of Basic Rent or Supplemental Rent due on the due date of any such payment of Termination Value, or any amount due on the Expiration Date;

(b) Lessee shall fail to make payment of any Supplemental Rent (other than Supplemental Rent referred to in Section 17.1(a)(ii)) or any other Credit Party shall fail to make any payment of any amount under any Operative Agreement which has become due and payable within fifteen (15) days after receipt of notice that such payment is due;

(c) [Reserved];

(d) (i) Lessee shall fail to observe or perform any term, covenant, obligation or condition of Lessee under this Lease (including without limitation the Incorporated Covenants) or any other Operative Agreement to which Lessee is a party other than those set forth in Sections 17.1(a), (b) or (c) hereof or any other Credit Party shall fail to observe or perform any term, covenant, obligation or condition of such Credit Party under any Operative Agreement other than those set forth in Section 17.1(b) hereof and such failure shall continue for thirty (30) days (or with respect to the Incorporated Covenants, the grace period, if any, applicable thereto) after notice thereof to the Lessee or such Credit Party, or (ii) any representation or warranty made by Lessee or any other Credit Party set forth in this Lease (including without limitation the Incorporated Representation and Warranties) or in any other Operative Agreement or in any document entered into in connection herewith or therewith or in any document, certificate or financial or other statement delivered in connection herewith or therewith shall be false or inaccurate in any material way when made;

(e) An Agency Agreement Event of Default shall have occurred and be continuing;

(f) Any Credit Party or any Subsidiary of any Credit Party shall default (beyond applicable periods of grace and/or notice and cure) in the payment when due of any principal of or interest on any Indebtedness having an outstanding principal amount of at least \$500,000; or any other event or condition shall occur which results in a default of any such Indebtedness or enables the holder of any such Indebtedness or any Person acting on such holder's behalf to accelerate the maturity thereof;

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(g) Any Credit Party (other than Dollar Tree Management, Inc.) shall cease to be solvent, or shall make an assignment for the benefit of creditors, or admit in writing its inability to pay or generally fail to pay its debts as they mature or become due, or shall petition or apply for the appointment of a trustee or other custodian, liquidator or receiver of any Credit Party or of any substantial part of the assets of any Credit Party or shall commence any case or other

proceeding relating to any Credit Party under any bankruptcy, reorganization, arrangement, insolvency, readjustment or debt, dissolution or liquidation or similar law of any jurisdiction, now or hereafter in effect, or shall take any action to authorize or in furtherance of any of the foregoing, or if such petition or application shall be filed or any such case or other proceeding shall be commenced against any Credit Party and such Credit Party shall indicate its approval thereof, consent thereto or acquiescence therein;

(h) The filing of any case or other proceeding against any Credit Party under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law of any jurisdiction, now or hereafter in effect and such case or proceeding is not discharged or dismissed within sixty (60) days of its commencement; a decree or order is entered appointing any such trustee, custodian, liquidator or receiver or adjudicating any Credit Party bankrupt or insolvent, or approving a petition in any such case or other proceeding, or a decree or order for relief is entered in respect of any Credit Party, an involuntary case under federal bankruptcy laws as now or hereafter constituted;

(i) [Reserved]

(j) The entering of any order in any proceedings against any Credit Party or any Subsidiary of any Credit Party decreeing the dissolution, divestiture or split-up of any Credit Party or any Subsidiary of any Credit Party, and such order remains in effect for more than sixty (60) days;

(k) Any report, certificate, financial statement or other instrument delivered to Lessor by or on behalf of any Credit Party pursuant to the terms of this Lease or any other Operative Agreement is false or misleading in any material respect when made or delivered;

(l) Any Lessee Credit Agreement Event of Default shall have occurred and be continuing and shall not have been waived;

(m) There shall remain in force, undischarged, unsatisfied and unstayed, for more than thirty (30) days, whether or not consecutive, any uninsured final judgment against any Credit Party that, with other outstanding uninsured final judgments, undischarged, against the Credit Parties exceeds \$2,000,000 in the aggregate;

(n) Any Credit Party or any member of the Controlled Group shall fail to pay when due an amount or amounts aggregating in excess of \$500,000 which it shall have

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become liable to pay to the PBGC or to a Pension Plan under Title IV of ERISA; or notice of intent to terminate a Pension Plan or Pension Plans having aggregate Unfunded Liabilities in excess of \$500,000 shall be filed under Title IV of ERISA by any Credit Party or any member of the Controlled Group, any plan administrator or any combination of the foregoing; or the PBGC shall institute proceedings under Title IV of ERISA to terminate or to cause a trustee to be appointed to administer any such Pension Plan or Pension Plans or a proceeding shall be instituted by a fiduciary of any such Pension Plan or Pension Plans against any Credit Party or any member of the Controlled Group to enforce Section 515 or 4219(c)(5) of ERISA; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any such Pension Plan or Pension Plans must be terminated;

(o) [Reserved];

(p) Any Operative Agreement shall cease to be in full force and effect; or

(q) Except as to any Credit Party which is released in connection with the Operative Agreements, the guaranty given by any Guarantor under the Participation Agreement or any material provision thereof shall cease to be in full force and effect, or any Guarantor or any Person acting by or on behalf of such Guarantor shall deny or disaffirm such Guarantor's obligations under such guaranty, or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to any guaranty;

then, in any such event, Lessor may, in addition to the other rights and remedies provided for in this Article XVII and in Section 18.1, terminate this Lease by giving Lessee five (5) days notice of such termination (provided, notwithstanding the foregoing, this Lease shall be deemed to be automatically terminated without the giving of notice upon the occurrence of a Lease Event of

Default under Sections 17.1(g) or (h)), and this Lease shall terminate, and all rights of Lessee under this Lease shall cease. Lessee shall, to the fullest extent permitted by law, pay as Supplemental Rent all costs and expenses incurred by or on behalf of Lessor or any other Financing Party, including without limitation reasonable fees and expenses of counsel, as a result of any Lease Event of Default hereunder.

A POWER OF SALE HAS BEEN GRANTED IN THIS LEASE. A POWER OF SALE MAY ALLOW LESSOR TO TAKE THE PROPERTIES AND SELL THE PROPERTIES WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON THE OCCURRENCE OF A LEASE EVENT OF DEFAULT.

#### 17.2 Surrender of Possession.

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall, upon thirty (30) days' written notice, surrender to Lessor possession of the Properties. Lessor may enter upon and repossess the Properties by such means as are available at law or in equity, and may remove

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Lessee and all other Persons and any and all personal property and Lessee's equipment and personalty and severable Modifications from the Properties. Lessor shall have no liability by reason of any such entry, repossession or removal performed in accordance with applicable law. Upon the written demand of Lessor, Lessee shall return the Properties promptly to Lessor, in the manner and condition required by, and otherwise in accordance with the provisions of, Section 22.1(c) hereof.

#### 17.3 Reletting.

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessor may, but shall be under no obligation to, relet any or all of the Properties, for the account of Lessee or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such purposes as Lessor may determine, and Lessor may collect, receive and retain the rents resulting from such reletting. Lessor shall not be liable to Lessee for any failure to relet any Property or for any failure to collect any rent due upon such reletting.

#### 17.4 Damages.

Neither (a) the termination of this Lease as to all or any of the Properties pursuant to Section 17.1; (b) the repossession of all or any of the Properties; nor (c) the failure of Lessor to relet all or any of the Properties, the reletting of all or any portion thereof, nor the failure of Lessor to collect or receive any rentals due upon any such reletting, shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive any such termination, repossession or reletting. If any Lease Event of Default shall have occurred and be continuing and notwithstanding any termination of this Lease pursuant to Section 17.1, Lessee shall forthwith pay to Lessor all Rent and other sums due and payable hereunder to and including without limitation the date of such termination. Thereafter, on the days on which the Basic Rent or Supplemental Rent, as applicable, are payable under this Lease or would have been payable under this Lease if the same had not been terminated pursuant to Section 17.1 and until the end of the Term hereof or what would have been the Term in the absence of such termination, Lessee shall pay Lessor, as current liquidated damages (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the Basic Rent and Supplemental Rent that are payable under this Lease or would have been payable by Lessee hereunder if this Lease had not been terminated pursuant to Section 17.1, less the net proceeds, if any, which are actually received by Lessor with respect to the period in question of any reletting of any Property or any portion thereof; provided, that Lessee's obligation to make payments of Basic Rent and Supplemental Rent under this Section 17.4 shall continue only so long as Lessor shall not have received the amounts specified in Section 17.6. In calculating the amount of such net proceeds from reletting, there shall be deducted all of Lessor's and the Bank's reasonable expenses in connection therewith, including without limitation repossession costs, brokerage or sales commissions, fees and expenses for counsel and any necessary repair or alteration costs and expenses incurred in preparation for such reletting. To the extent Lessor receives any damages pursuant to this Section 17.4, such amounts shall be regarded as amounts paid on account of

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Rent. Lessee specifically acknowledges and agrees that its obligations under this Section 17.4 shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, setoff, defense, counterclaim or recoupment whatsoever.



17.5 Power of Sale.

Without limiting any other remedies set forth in this Lease, Lessor and Lessee agree that Lessee has granted, pursuant to Section 7.1(b) hereof and each Lease Supplement, a Lien against the Properties WITH POWER OF SALE, and that, upon the occurrence and during the continuance of any Lease Event of Default, Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Properties.

17.6 Final Liquidated Damages.

If a Lease Event of Default shall have occurred and be continuing, whether or not this Lease shall have been terminated pursuant to Section 17.1 and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.4, Lessor shall have the right to recover, by demand to Lessee and at Lessor's election, and Lessee shall pay to Lessor, as and for final liquidated damages, but exclusive of the indemnities payable under Section 11 of the Participation Agreement (which, if requested, shall be paid concurrently), and in lieu of all current liquidated damages beyond the date of such demand (it being agreed that it would be impossible accurately to determine actual damages) the Termination Value. Upon payment of the amount specified pursuant to the first sentence of this Section 17.6, Lessee shall be entitled to receive from Lessor, either at Lessee's request or upon Lessor's election, in either case at Lessee's cost, an assignment of Lessor's entire right, title and interest in and to the Properties, Improvements, Fixtures, Modifications, Equipment and all components thereof, in each case in recordable form and otherwise in conformity with local custom and free and clear of the Lien of this Lease (including without limitation the release of any memoranda of Lease and/or the Lease Supplement recorded in connection therewith) and any Lessor Liens. The Properties shall be conveyed to Lessee "AS-IS, WHERE-IS" and in their then present physical condition. If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law; provided, however, Lessee shall not be entitled to receive an assignment of Lessor's interest in the Properties, the Improvements, Fixtures, Modifications, Equipment or the components thereof unless Lessee shall have paid in full the Termination Value. Lessee specifically acknowledges and agrees that its obligations under this Section 17.6 shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, setoff, defense, counterclaim or recoupment whatsoever.

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17.7 Environmental Costs.

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall pay directly to any third party (or at Lessor's election, reimburse Lessor) for the cost of any environmental testing and/or remediation work undertaken respecting any Property, as such testing or work is deemed appropriate in the reasonable judgment of Lessor. Lessee shall pay all amounts referenced in the immediately preceding sentence within ten (10) days of any request by Lessor for such payment. The provisions of this Section 17.7 shall not limit the obligations of Lessee under any Operative Agreement regarding indemnification obligations, environmental testing, remediation and/or work.

17.8 Waiver of Certain Rights.

If this Lease shall be terminated pursuant to Section 17.1, Lessee waives, to the fullest extent permitted by Law, (a) any right of redemption, re-entry or possession; (b) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt; and (c) any other rights which might otherwise limit or modify any of Lessor's rights or remedies under this Article XVII.

17.9 Assignment of Rights Under Contracts.

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall upon Lessor's demand immediately assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to each agreement executed by Lessee in connection with the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Properties (including without limitation all right, title and interest of Lessee with respect to all warranty, performance, service and indemnity provisions), as and to the extent that the same relate to the acquisition, installation, testing, use, development,

construction, operation, maintenance, repair, refurbishment and restoration of the Properties or any of them.

17.10 Remedies Cumulative.

The remedies herein provided shall be cumulative and in addition to (and not in limitation of) any other remedies available at law, equity or otherwise, including without limitation any mortgage foreclosure remedies.

ARTICLE XVIII

18.1 Lessors Right to Cure Lessees Lease Defaults.

Lessor, without waiving or releasing any obligation or Lease Event of Default, may (but shall be under no obligation to) remedy any Lease Event of Default for the account and

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at the sole cost and expense of Lessee, including without limitation the failure by Lessee to maintain the insurance required by Article XIV, and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of Lessee, enter upon any Property, and take all such action thereon as may be necessary or appropriate therefor. No such entry shall be deemed an eviction of any lessee. All out-of-pocket costs and expenses so incurred (including without limitation fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by Lessor, shall be paid by Lessee to Lessor on demand.

ARTICLE XIX

19.1 Provisions Relating to Lessees Exercise of its Purchase Option.

Subject to Section 19.2, in connection with any termination of this Lease with respect to any Property pursuant to the terms of Section 16.2, or in connection with Lessee's exercise of its Purchase Option, upon the date on which this Lease is to terminate with respect to any Property, and upon tender by Lessee of the amounts set forth in Sections 16.2(b) or 20.2, as applicable, Lessor shall execute and deliver to Lessee (or to Lessee's designee) at Lessee's cost and expense an assignment (by deed or other appropriate instrument) of Lessor's entire interest in such Property, in each case in recordable form and otherwise in conformity with local custom and free and clear of any Lessor Liens attributable to Lessor but without any other warranties (of title or otherwise) from Lessor. Such Property shall be conveyed to Lessee "AS-IS, "WHERE-IS" and in then present physical condition.

19.2 No Purchase or Termination With Respect to Less than All of a Property.

Lessee shall not be entitled to exercise its Purchase Option or the Sale Option separately with respect to a portion of any Property consisting of Land, Equipment, Improvements and/or any interest pursuant to a Ground Lease but shall be required to exercise its Purchase Option or the Sale Option with respect to an entire Property.

ARTICLE XX

20.1 Purchase Option or Sale OptionGeneral Provisions.

Not less than one hundred eighty (180) days (or respecting the Purchase Option only, not less than sixty (60) days) and no more than two hundred forty (240) days prior to the third annual anniversary of the date of this Lease, the Expiration Date or, respecting the Purchase Option only, any Payment Date (such third annual anniversary date, such Expiration Date or, respecting the Purchase Option only, any such Payment Date being hereinafter referred to as the "Election Date"), Lessee may give Lessor irrevocable written notice (the "Election Notice") that Lessee is electing to exercise either (a) the option to purchase all, but not less than all, the Properties on the applicable Election Date (the "Purchase Option") or (b) with respect to an

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Election Notice given in connection with the third annual anniversary of the date of this Lease or the Expiration Date only, the option to remarket all, but not less than all, the Properties to a Person other than Lessee or any Affiliate of Lessee and cause a sale of such Properties to occur on the applicable Election Date pursuant to the terms of Section 22.1 (the "Sale Option"). If Lessee does not give an Election Notice indicating the Purchase Option or the Sale Option at least one hundred eighty (180) days and not more than two hundred

forty (240) days prior to the Expiration Date, then Lessee shall be deemed to have elected for the Purchase Option to apply on the Expiration Date. If Lessee shall either (i) elect (or be deemed to have elected) to exercise the Purchase Option or (ii) elect the Sale Option and fail to cause all, but not less than all, the Properties to be sold in accordance with the terms of Section 22.1 on the applicable Election Date, then in either case Lessee shall pay to Lessor on the date on which such purchase or sale is scheduled to occur an amount equal to the Termination Value for all, but not less than all, the Properties (which the parties do not intend to be a "bargain" purchase price) and, upon receipt of such amounts and satisfaction of such obligations, Lessor shall transfer to Lessee all of Lessor's right, title and interest in and to all, but not less than all, the Properties in accordance with Section 20.2.

#### 20.2 Lessee Purchase Option.

Provided, no Default or Event of Default shall have occurred and be continuing (other than those that will be cured by the payment of the Termination Value for all the Properties) and provided, that the Election Notice has been appropriately given specifying the Purchase Option, Lessee shall purchase all the Properties on the applicable Election Date at a price equal to the Termination Value for such Properties (which the parties do not intend to be a "bargain" purchase price).

Subject to Section 19.2, in connection with any termination of this Lease with respect to any Property pursuant to the terms of Section 16.2, or in connection with Lessee's exercise of its Purchase Option, upon the date on which this Lease is to terminate with respect to a Property or all of the Properties, and upon tender by Lessee of the amounts set forth in Section 16.2(b) or this Section 20.2, as applicable, Lessor shall execute, acknowledge (where required) and deliver to Lessee, at Lessee's cost and expense, each of the following: (a) a termination or assignment (as requested by the Lessee) of each applicable Ground Lease and special or limited warranty Deeds conveying each Property (to the extent it is real property not subject to a Ground Lease) to Lessee free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (b) a Bill of Sale conveying each Property (to the extent it is personal property) to Lessee free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (c) any real estate tax affidavit or other document required by law to be executed and filed in order to record the applicable Deed and/or the applicable Ground Lease termination; and (d) FIRPTA affidavits. All of the foregoing documentation must be in form and substance reasonably satisfactory to Lessor. The applicable Property shall be conveyed to Lessee "AS-IS, WHERE-IS" and in then present physical condition.

If any Property is the subject of remediation efforts respecting Hazardous Substances at the applicable Election Date which could materially and adversely impact the Fair

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Market Sales Value of such Property (with materiality determined in Lessor's discretion), then Lessee shall be obligated to purchase each such Property pursuant to Section 20.2.

On the applicable Election Date on which Lessee has elected to exercise its Purchase Option, Lessee shall pay (or cause to be paid) to Lessor, the Bank and all other parties, as appropriate, the sum of all costs and expenses incurred by any such party in connection with the election by Lessee to exercise its Purchase Option and all Rent and all other amounts then due and payable or accrued under this Lease and/or any other Operative Agreement.

#### 20.3 Third Party Sale Option.

(a) Provided, that (i) no Default or Event of Default shall have occurred and be continuing and (ii) the Election Notice has been appropriately given specifying the Sale Option, Lessee shall undertake to cause a sale of the Properties on the applicable Election Date (all as specified in the Election Notice), in accordance with the provisions of Section 22.1 hereof. Such Election Date on which a sale is required may be hereafter referred to as the "Sale Date".

(b) In the event Lessee exercises the Sale Option then, as soon as practicable and in all events not less than sixty (60) days prior to the Sale Date, Lessee at its expense shall cause to be delivered to Lessor a Phase I environmental site assessment for each of the Properties recently prepared (no more than thirty (30) days old prior to the Sale Date) by an independent recognized professional reasonably acceptable to Lessor and in form, scope and content reasonably satisfactory to Lessor. In the event that Lessor shall not have received such environmental site assessment by the date sixty (60) days prior to the Sale Date or in the event that such environmental assessment shall reveal the existence of any material violation of Environmental Laws, other material Environmental Violation or potential

material Environmental Violation (with materiality determined in each case by Lessor in its reasonable discretion), then Lessee on the Sale Date shall pay to Lessor an amount equal to the Termination Value for all the Properties and any and all other amounts due and owing hereunder. Upon receipt of such payment and all other amounts due under the Operative Agreements, Lessor shall transfer to Lessee all of Lessor's right, title and interest in and to all the Properties in accordance with Section 19.1.

#### ARTICLE XXI

20.1 [Intentionally Omitted].

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#### ARTICLE XXII

22.1 Sale Procedure.

(a) During the Marketing Period, Lessee, on behalf of Lessor, shall obtain bids for the cash purchase of all the Properties in connection with a sale to one (1) or more third party purchasers to be consummated on the Sale Date for the highest price available, shall notify Lessor promptly of the name and address of each prospective purchaser and the cash price which each prospective purchaser shall have offered to pay for each such Property and shall provide Lessor with such additional information about the bids and the bid solicitation procedure as Lessor may reasonably request from time to time. All such prospective purchasers must be Persons other than Lessee or any Affiliate of Lessee. On the Sale Date, Lessee shall pay (or cause to be paid) to Lessor and all other parties, as appropriate, the sum of all costs and expenses incurred by Lessor and/or the Bank (as the case may be) in connection with such sale of one or more Properties, all Rent and all other amounts then due and payable or accrued under this Lease and/or any other Operative Agreement.

Lessor may reject any and all bids and may solicit and obtain bids by giving Lessee written notice to that effect; provided, however, that notwithstanding the foregoing, Lessor may not reject the bids submitted by Lessee if such bids, in the aggregate, are greater than or equal to the sum of the Limited Recourse Amount for all the Properties, and represent bona fide offers from one (1) or more third party purchasers. If the highest price which a prospective purchaser or the prospective purchasers shall have offered to pay for all the Properties on the Sale Date is less than the sum of the Limited Recourse Amount for all the Properties or if such bids do not represent bona fide offers from one (1) or more third parties or if there are no bids, Lessor may elect to retain one or more of the Properties by giving Lessee prior written notice of Lessor's election to retain the same, and promptly upon receipt of such notice, Lessee shall surrender, or cause to be surrendered, each of the Properties specified in such notice in accordance with the terms and conditions of Section 10.1. Upon acceptance of any bid, Lessor agrees, at Lessee's request and expense, to execute a contract of sale with respect to such sale, so long as the same is consistent with the terms of this Article 22 and provides by its terms that it is nonrecourse to Lessor.

Unless Lessor shall have elected to retain one or more of the Properties pursuant to the provisions of the preceding paragraph, Lessee shall arrange for Lessor to sell all the Properties free and clear of the Lien of this Lease and any Lessor Liens attributable to Lessor, without recourse or warranty (of title or otherwise), for cash on the Sale Date to the purchaser or purchasers offering the highest cash sales price, as identified by Lessee or Lessor, as the case may be; provided, however, solely as to Lessor or the Trust Company, in its individual capacity, any Lessor Lien shall not constitute a Lessor Lien so long as Lessor or the Trust Company, in its individual capacity, is diligently and in good faith contesting, at the cost and expense of Lessor or the Trust Company, in its individual capacity, such Lessor Lien by appropriate proceedings in which event the applicable Sale

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Date, all without penalty or cost to Lessee, shall be delayed for the period of such contest. To effect such transfer and assignment, Lessor shall execute, acknowledge (where required) and deliver to the appropriate purchaser each of the following: (a) special or limited warranty Deeds conveying each such Property (to the extent it is real property titled to Lessor) and an assignment of the Ground Lease conveying the leasehold interest of Lessor in each such Property (to the extent it is real property and subject to a Ground Lease) to the appropriate purchaser free and clear of the Lien of this Lease, the

Lien of the Credit Documents and any Lessor Liens; (b) a Bill of Sale conveying each such Property (to the extent it is personal property) titled to Lessor to the appropriate purchaser free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (c) any real estate tax affidavit or other document required by law to be executed and filed in order to record each Deed and/or each Ground Lease assignment; and (d) FIRPTA affidavits, as appropriate. All of the foregoing documentation must be in form and substance reasonably satisfactory to Lessor. Lessee shall surrender the Properties so sold or subject to such documents to each purchaser in the condition specified in Section 10.1, or in such other condition as may be agreed between Lessee and such purchaser. Lessee shall not take or fail to take any action which would have the effect of unreasonably discouraging bona fide third party bids for any Property. If each of the Properties is not either (i) sold on the Sale Date in accordance with the terms of this Section 22.1, or (ii) retained by Lessor pursuant to an affirmative election made by Lessor pursuant to the second sentence of the second paragraph of this Section 22.1(a), then (x) Lessee shall be obligated to pay Lessor on the Sale Date an amount equal to the aggregate Termination Value for all the Properties less any sales proceeds received, and (y) Lessor shall transfer each applicable Property to Lessee in accordance with Section 20.2.

(b) If the Properties are sold on a Sale Date to one (1) or more third party purchasers in accordance with the terms of Section 22.1(a) and the aggregate purchase price paid for all the Properties is less than the sum of the aggregate Property Cost for all the Properties (hereinafter such difference shall be referred to as the "Deficiency Balance"), then Lessee hereby unconditionally promises to pay to Lessor on the Sale Date the lesser of (i) the Deficiency Balance, or (ii) the Maximum Residual Guarantee Amount for all the Properties. On a Sale Date if (x) Lessor receives the aggregate Termination Value for all the Properties from one (1) or more third party purchasers, (y) Lessor and such other parties receive all other amounts specified in the last sentence of the first paragraph of Section 22.1(a) and (z) the aggregate purchase price paid for all the Properties on such date exceeds the sum of the aggregate Property Cost for all the Properties, then Lessee may retain such excess. If one or more of the Properties are retained by Lessor pursuant to an affirmative election made by Lessor pursuant to the provisions of Section 22.1(a), then Lessee hereby unconditionally promises to pay to Lessor on the Sale Date an amount equal to the Maximum Residual Guarantee Amount for the Properties so retained. Any payment of the foregoing amounts described in this Section 22.1(b) shall be made together with a payment of all other amounts referenced in the last sentence of the first paragraph of Section 22.1(a).

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(c) In the event that all the Properties are either sold to one (1) or more third party purchasers on the Sale Date or retained by Lessor in connection with an affirmative election made by Lessor pursuant to the provisions of Section 22.1(a), then in either case on the applicable Sale Date Lessee shall provide Lessor or such third party purchaser (unless otherwise agreed by such third party purchaser) with (i) all permits, certificates of occupancy, governmental licenses and authorizations necessary to use, operate, repair, access and maintain each such Property for the purpose it is being used by Lessee, and (ii) such manuals, permits, easements, licenses, intellectual property, know-how, rights-of-way and other rights and privileges in the nature of an easement as are reasonably necessary or desirable in connection with the use, operation, repair, access to or maintenance of each such Property for its intended purpose or otherwise as Lessor or such third party purchaser(s) shall reasonably request (and a royalty-free license or similar agreement to effectuate the foregoing on terms reasonably agreeable to Lessor or such third party purchaser(s), as applicable). All assignments, licenses, easements, agreements and other deliveries required by clauses (i) and (ii) of this paragraph (c) shall be in form reasonably satisfactory to Lessor or such third party purchaser(s), as applicable, and shall be fully assignable (including without limitation both primary assignments and assignments given in the nature of security) without payment of any fee, cost or other charge. Lessee shall also execute any documentation requested by Lessor or such third party purchaser(s), as applicable, evidencing the continuation or assignment of each Ground Lease.

## 22.2 Application of Proceeds of Sale.

Lessor shall apply the proceeds of sale of any Property in the following order of priority:

(a) FIRST, to pay or to reimburse Lessor (and/or the Bank, as the case may be) for the payment of all reasonable costs and expenses

incurred by Lessor (and/or the Bank, as the case may be) in connection with the sale (to the extent Lessee has not satisfied its obligation to pay such costs and expenses);

(b) SECOND, so long as the Credit Agreement is in effect and any Loans or Holder Advances or any amount is owing to the Financing Parties under any Operative Agreement, to the Bank to be allocated in accordance with Section 8.7 of the Participation Agreement; and

(c) THIRD, to Lessee.

#### 22.3 Indemnity for Excessive Wear.

If the proceeds of the sale described in Section 22.1 with respect to the Properties shall be less than the Limited Recourse Amount with respect to the Properties, and at the time of such sale it shall have been reasonably determined (pursuant to the Appraisal Procedure) that the Fair Market Sales Value of the Properties shall have been impaired by greater than expected wear

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and tear during the term of the Lease, Lessee shall pay to Lessor within ten (10) days after receipt of Lessor's written statement (i) the amount of such excess wear and tear determined by the Appraisal Procedure or (ii) the amount of the Sale Proceeds Shortfall, whichever amount is less.

#### 22.4 Appraisal Procedure.

For determining the Fair Market Sales Value of the Properties or any other amount which may, pursuant to any provision of any Operative Agreement, be determined by an appraisal procedure, Lessor and Lessee shall use the following procedure (the "Appraisal Procedure"). Lessor and Lessee shall endeavor to reach a mutual agreement as to such amount for a period of ten (10) days from commencement of the Appraisal Procedure under the applicable section of the Lease, and if they cannot agree within ten (10) days, then two (2) qualified appraisers, one (1) chosen by Lessee and one (1) chosen by Lessor, shall mutually agree thereupon, but if either party shall fail to choose an appraiser within twenty (20) days after notice from the other party of the selection of its appraiser, then the appraisal by such appointed appraiser shall be binding on Lessee and Lessor. If the two (2) appraisers cannot agree within twenty (20) days after both shall have been appointed, then a third appraiser shall be selected by the two (2) appraisers or, failing agreement as to such third appraiser within thirty (30) days after both shall have been appointed, by the American Arbitration Association. The decisions of the three (3) appraisers shall be given within twenty (20) days of the appointment of the third appraiser and the decision of the appraiser most different from the average of the other two (2) shall be discarded and such average shall be binding on Lessor and Lessee; provided, that if the highest appraisal and the lowest appraisal are equidistant from the third appraisal, the third appraisal shall be binding on Lessor and Lessee. The fees and expenses of the appraiser appointed by Lessee shall be paid by Lessee; the fees and expenses of the appraiser appointed by Lessor shall be paid by Lessor (such fees and expenses not being indemnified pursuant to Section 11 of the Participation Agreement); and the fees and expenses of the third appraiser shall be divided equally between Lessee and Lessor (such fees and expenses not being indemnified pursuant to Section 11 of the Participation Agreement).

#### 22.5 Certain Obligations Continue.

During the Marketing Period, the obligation of Lessee to pay Rent with respect to the Properties (including without limitation the installment of Basic Rent due on the Sale Date) shall continue undiminished until payment in full to Lessor of the sale proceeds, if any, the Maximum Residual Guarantee Amount, the amount due under Section 22.3, if any, and all other amounts due to Lessor or any other Person with respect to all Properties or any Operative Agreement. Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise to take action in connection with any such sale, other than as expressly provided in this Article XXII.

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### ARTICLE XXIII

#### 23.1 Holding Over.

If Lessee shall for any reason remain in possession of a Property after the expiration or earlier termination of this Lease as to such Property (unless such Property is conveyed to Lessee), such possession shall be as a tenancy at sufferance during which time Lessee shall continue to pay Supplemental Rent that would be payable by Lessee hereunder were the Lease then

in full force and effect with respect to such Property and Lessee shall continue to pay Basic Rent at the lesser of the highest lawful rate and one hundred ten percent (110%) of the last payment of Basic Rent due with respect to such Property prior to such expiration or earlier termination of this Lease. Such Basic Rent shall be payable from time to time upon demand by Lessor and such additional amount of Basic Rent shall be applied by Lessor ratably to the Lenders and the Holders based on their relative amounts of the then outstanding aggregate Property Cost for all Properties. During any period of tenancy at sufferance, Lessee shall, subject to the second preceding sentence, be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to tenants at sufferance, to continue their occupancy and use of such Property. Nothing contained in this Article XXIII shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease as to any Property (unless such Property is conveyed to Lessee) and nothing contained herein shall be read or construed as preventing Lessor from maintaining a suit for possession of such Property or exercising any other remedy available to Lessor at law or in equity.

#### ARTICLE XXIV

##### 24.1 Risk of Loss.

During the Term, unless Lessee shall not be in actual possession of any Property in question solely by reason of Lessor's exercise of its remedies of dispossession under Article XVII, the risk of loss or decrease in the enjoyment and beneficial use of such Property as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by Lessee, and Lessor shall in no event be answerable or accountable therefor.

#### ARTICLE XXV

##### 25.1 Assignment.

(a) Lessee may not assign this Lease or any of its rights or obligations hereunder or with respect to any Property in whole or in part to any Person without the prior written consent of the Bank and Lessor (except for any assignment arising by

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operation of law as a result of a merger of the Lessee permitted without consent under Section 8.4 of the Lessee Credit Agreement).

(b) No assignment by Lessee (referenced in this Section 25.1 or otherwise) or other relinquishment of possession to any Property shall in any way discharge or diminish any of the obligations of Lessee to Lessor hereunder and Lessee shall remain directly and primarily liable under the Operative Agreements as to any rights or obligations assigned by Lessee or regarding any Property in which rights or obligations have been assigned or otherwise transferred.

##### 25.2 Subleases.

(a) Promptly, but in any event within five (5) Business Days, following the execution and delivery of any sublease permitted by this Article XXV, Lessee shall notify Lessor of the execution of such sublease. As of the date of each Lease Supplement, Lessee shall lease the respective Properties described in such Lease Supplement from Lessor, and any existing tenant respecting such Property shall automatically be deemed to be a subtenant of Lessee and not a tenant of Lessor.

(b) So long as no Lease Event of Default shall have occurred and be continuing, without the prior written consent of the Bank or Lessor and subject to the other provisions of this Section 25.2, Lessee may sublet any Property or portion thereof to any wholly-owned Subsidiary of Lessee or DTS. Except as referenced in the immediately preceding sentence, no other subleases shall be permitted unless consented to in writing by Lessor. All subleasing shall be done on market terms and shall in no way diminish the fair market value or useful life of any applicable Property.

(c) No sublease (referenced in this Section 25.2 or otherwise) or other relinquishment of possession to any Property shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder and Lessee shall remain directly and primarily liable under this Lease as to such Property, or portion thereof, so sublet. The term of any such sublease shall not extend beyond the Term. Each sublease shall be expressly subject and subordinate to this Lease.

ARTICLE XXVI

26.1 No Waiver.

No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a default hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. To the fullest extent permitted by law, no waiver of any default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

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ARTICLE XXVII

27.1 Acceptance of Surrender.

No surrender to Lessor of this Lease or of all or any portion of any Property or of any part of any thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and no act by Lessor or the Bank or any representative or agent of Lessor or the Bank, other than a written acceptance, shall constitute an acceptance of any such surrender.

27.2 No Merger of Title.

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, in whole or in part, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, (b) any right, title or interest in any Property, (c) any Notes, or (d) a beneficial interest in Lessor.

ARTICLE XXVIII

28.1 Incorporation of Covenants.

Reference is made to the Lessee Credit Agreement and the representations and warranties of Lessee contained in Section 6 of the Lessee Credit Agreement (hereinafter referred to as the "Incorporated Representations and Warranties") and the covenants contained in Sections 7, 8 and 9 of the Lessee Credit Agreement (hereinafter referred to as the "Incorporated Covenants"). Lessee agrees with Lessor that the Incorporated Representations and Warranties and the Incorporated Covenants (and all other relevant provisions of the Lessee Credit Agreement related thereto, including without limitation the defined terms contained in Section I thereof which are used in the Incorporated Representations and Warranties and the Incorporated Covenants, hereinafter referred to as the "Additional Incorporated Terms") are hereby incorporated by reference into this Lease to the same extent and with the same effect as if set forth fully herein and shall inure to the benefit of Lessor, without giving effect to any waiver, amendment, modification or replacement of the Lessee Credit Agreement or any term or provision of the Incorporated Representations and Warranties or the Incorporated Covenants occurring subsequent to the date of this Lease, except to the extent otherwise specifically provided in the following provisions of this paragraph. In the event a waiver is granted under the Lessee Credit Agreement or an amendment or modification is executed with respect to the Lessee Credit Agreement, and such waiver, amendment and/or modification affects the Incorporated Representations and Warranties, the Incorporated Covenants or the Additional Incorporated Terms, then such waiver, amendment or modification shall be effective with respect to the Incorporated Representations and Warranties, the Incorporated Covenants and the

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Additional Incorporated Terms as incorporated by reference into this Lease. In the event of any replacement of the Lessee Credit Agreement with a similar credit facility (the "New Facility") the representations and warranties, covenants and additional terms contained in the New Facility which correspond to the representations and warranties, covenants contained in Section 6 and Sections 7,8 and 9, respectively, and such additional terms (each of the foregoing contained in the Lessee Credit Agreement) shall become the Incorporated Representations and Warranties, the Incorporated Covenants and the Additional Incorporated Terms and, if the Lessee Credit Agreement is terminated and not replaced, then the representations and warranties and covenants contained in Section 6 and Sections 7, 8 and 9, respectively, and such additional terms (each of the foregoing contained in the Lessee Credit Agreement (together with any modifications or amendments approved in accordance with this



paragraph)) shall continue to be the Incorporated Representations and Warranties, the Incorporated Covenants and the Additional Incorporated Terms hereunder.

#### ARTICLE XXIX

##### 29.1 Notices.

All notices required or permitted to be given under this Lease shall be in writing and delivered as provided in the Participation Agreement.

#### ARTICLE XXX

##### 30.1 Miscellaneous.

Anything contained in this Lease to the contrary notwithstanding, all claims against and liabilities of Lessee or Lessor arising from events commencing prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier termination. If any provision of this Lease shall be held to be unenforceable in any jurisdiction, such unenforceability shall not affect the enforceability of any other provision of this Lease and such jurisdiction or of such provision or of any other provision hereof in any other jurisdiction.

##### 30.2 Amendments and Modifications.

Neither this Lease nor any Lease Supplement may be amended, waived, discharged or terminated except in accordance with the provisions of Section 12.4 of the Participation Agreement.

##### 30.3 Successors and Assigns.

All the terms and provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

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##### 30.4 Headings and Table of Contents.

The headings and table of contents in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

##### 30.5 Counterparts.

This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one (1) and the same instrument.

##### 30.6 GOVERNING LAW.

THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, EXCEPT TO THE EXTENT THE LAWS OF THE STATE WHERE A PARTICULAR PROPERTY IS LOCATED ARE REQUIRED TO APPLY.

##### 30.7 Calculation of Rent.

All calculation of Rent payable hereunder shall be computed based on the actual number of days elapsed over a year of three hundred sixty (360) days or, to the extent such Rent is based on the Prime Lending Rate, three hundred sixty-five (365) (or three hundred sixty-six (366), as applicable) days.

##### 30.8 Memoranda of Lease and Lease Supplements.

This Lease shall not be recorded; provided, Lessor and Lessee shall promptly record (a) a memorandum of this Lease and the applicable Lease Supplement (in substantially the form of Exhibit B attached hereto) or a short form lease (in form and substance reasonably satisfactory to Lessor) regarding each Property promptly after the acquisition thereof in the local filing office with respect thereto, in all cases at Lessee's cost and expense, and as required under applicable law to sufficiently evidence this Lease and any such Lease Supplement in the applicable real estate filing records.

##### 30.9 [Intentionally Left Blank].

##### 30.10 Limitations on Recourse.

Notwithstanding anything contained in this Lease to the contrary, Lessee agrees to look solely to Lessor's estate and interest in the

Properties (and in no circumstance to the Bank or otherwise to Lessor) for the collection of any judgment requiring the payment of money by Lessor in the event of liability by Lessor, and no other property or assets of Lessor or any shareholder, owner or partner (direct or indirect) in or of Lessor, or any director, officer, employee, beneficiary, Affiliate of any of the foregoing shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of Lessee under or with respect

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to this Lease, the relationship of Lessor and Lessee hereunder or Lessee's use of the Properties or any other liability of Lessor to Lessee. Nothing in this Section shall be interpreted so as to limit the terms of Sections 6.1 or 6.2 or the provisions of Section 12.9 of the Participation Agreement.

30.11 WAIVERS OF JURY TRIAL.

EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LEASE AND FOR ANY COUNTERCLAIM THEREIN.

30.12 Exercise of Lessor Rights.

Lessee hereby acknowledges and agrees that the rights and powers of Lessor under this Lease have been assigned to the Bank pursuant to the terms of the Security Agreement and the other Operative Agreements. Lessor and Lessee hereby acknowledge and agree that (a) the Bank shall, in its discretion, direct and/or act on behalf of Lessor pursuant to the provisions of Sections 8.2(h) and 8.6 of the Participation Agreement, (b) all notices to be given to Lessor shall be given to the Bank and (c) all notices to be given by Lessor may be given by the Bank, at its election.

30.13 SUBMISSION TO JURISDICTION; VENUE; ARBITRATION.

THE PROVISIONS OF THE PARTICIPATION AGREEMENT RELATING TO SUBMISSION TO JURISDICTION, VENUE AND ARBITRATION ARE HEREBY INCORPORATED BY REFERENCE HEREIN, MUTATIS MUTANDIS.

30.14 USURY SAVINGS PROVISION.

IT IS THE INTENT OF THE PARTIES HERETO TO CONFORM TO AND CONTRACT IN STRICT COMPLIANCE WITH APPLICABLE USURY LAW FROM TIME TO TIME IN EFFECT. TO THE EXTENT ANY RENT OR PAYMENTS HEREUNDER ARE HEREINAFTER CHARACTERIZED BY ANY COURT OF COMPETENT JURISDICTION AS THE REPAYMENT OF PRINCIPAL AND INTEREST THEREON, THIS SECTION 30.14 SHALL APPLY. ANY SUCH RENT OR PAYMENTS SO CHARACTERIZED AS INTEREST MAY BE REFERRED TO HEREIN AS "INTEREST." ALL AGREEMENTS AMONG THE PARTIES HERETO ARE HEREBY LIMITED BY THE PROVISIONS OF THIS PARAGRAPH WHICH SHALL OVERRIDE AND CONTROL ALL SUCH AGREEMENTS, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER WRITTEN OR ORAL. IN NO WAY, NOR IN ANY EVENT OR CONTINGENCY (INCLUDING WITHOUT LIMITATION PREPAYMENT OR ACCELERATION OF THE MATURITY OF ANY OBLIGATION), SHALL ANY INTEREST TAKEN, RESERVED, CONTRACTED FOR, CHARGED, OR RECEIVED UNDER THIS

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LEASE OR OTHERWISE, EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMISSIBLE UNDER APPLICABLE LAW. IF, FROM ANY POSSIBLE CONSTRUCTION OF ANY OF THE OPERATIVE AGREEMENTS OR ANY OTHER DOCUMENT OR AGREEMENT, INTEREST WOULD OTHERWISE BE PAYABLE IN EXCESS OF THE MAXIMUM NONUSURIOUS AMOUNT, ANY SUCH CONSTRUCTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH AND SUCH AMOUNTS UNDER SUCH DOCUMENTS OR AGREEMENTS SHALL BE AUTOMATICALLY REDUCED TO THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED UNDER APPLICABLE LAW, WITHOUT THE NECESSITY OF EXECUTION OF ANY AMENDMENT OR NEW DOCUMENT OR AGREEMENT. IF LESSOR SHALL EVER RECEIVE ANYTHING OF VALUE WHICH IS CHARACTERIZED AS INTEREST WITH RESPECT TO THE OBLIGATIONS OWED HEREUNDER OR UNDER APPLICABLE LAW AND WHICH WOULD, APART FROM THIS PROVISION, BE IN EXCESS OF THE MAXIMUM LAWFUL AMOUNT, AN AMOUNT EQUAL TO THE AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE INTEREST SHALL, WITHOUT PENALTY, BE APPLIED TO THE REDUCTION OF THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL AND NOT TO THE PAYMENT OF INTEREST, OR REFUNDED TO LESSEE OR ANY OTHER PAYOR THEREOF, IF AND TO THE EXTENT SUCH AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE EXCEEDS THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL. THE RIGHT TO DEMAND PAYMENT OF ANY AMOUNTS EVIDENCED BY ANY OF THE OPERATIVE AGREEMENTS DOES NOT INCLUDE THE RIGHT TO RECEIVE ANY INTEREST WHICH HAS NOT OTHERWISE ACCRUED ON THE DATE OF SUCH DEMAND, AND LESSOR DOES NOT INTEND TO CHARGE OR RECEIVE ANY UNEARNED INTEREST IN THE EVENT OF SUCH DEMAND. ALL INTEREST PAID OR AGREED TO BE PAID TO LESSOR SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BE AMORTIZED, PRORATED, ALLOCATED, AND SPREAD THROUGHOUT THE FULL STATED TERM (INCLUDING WITHOUT LIMITATION ANY RENEWAL OR EXTENSION) OF THIS LEASE SO THAT THE AMOUNT OF

INTEREST ON ACCOUNT OF SUCH PAYMENTS DOES NOT EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED BY APPLICABLE LAW.

[signature pages follow]

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IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed and delivered as of the date first above written.

FIRST SECURITY BANK,  
NATIONAL ASSOCIATION, not  
individually, but solely as  
the Owner Trustee under the  
DTSD Realty Trust 1999-1,  
as Lessor

By: /s/ Val T. Orton  
Name: Val T. Orton  
Title: Vice President

DOLLAR TREE DISTRIBUTION, INC., as Lessee

By: /s/ Frederick C. Coble  
Name: Frederick C. Coble  
Title: Sr. V.P.

Receipt of this original  
counterpart of the foregoing  
Lease is hereby acknowledged  
as the date hereof

FIRST UNION NATIONAL BANK,  
as Lender and Holder

By:  
Name:  
Title:

EXHIBIT A TO THE LEASE

LEASE SUPPLEMENT NO. \_\_\_\_

THIS LEASE SUPPLEMENT NO. \_\_\_\_ (this "Lease Supplement") dated as of \_\_\_\_\_, 199\_\_ between FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, not individually, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1, as lessor (the "Lessor"), and DOLLAR TREE DISTRIBUTION, INC., a Virginia corporation, as lessee (the "Lessee").

WHEREAS, Lessor is the owner or will be the owner of the Property described on Schedule 1 hereto (the "Leased Property") and wishes to lease the same to Lessee;

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

SECTION 1. Definitions; Rules of Usage. For purposes of this Lease Supplement, capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in Appendix A to the Participation Agreement, dated as of June 2, 1999, among Lessee, the various parties thereto from time to time, as the Guarantors, Lessor, not individually, except as expressly stated therein, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1, and First Union National Bank, as Lender and Holder, as such may be amended, modified, extended, supplemented, restated and/or replaced from time to time.

SECTION 2. The Properties. Attached hereto as Schedule 1 is the

description of the Leased Property, with an Equipment Schedule attached hereto as Schedule 1 A, an Improvement Schedule attached hereto as Schedule 1 B and [a legal description of the Land / a copy of the Ground Lease] attached hereto as Schedule 1 C. Effective upon the Commencement Date, the Leased Property shall be subject to the terms and provisions of the Lease. Without further action, on the Commencement Date, any and all additional Equipment funded under the Operative Agreements and any and all additional Improvements made to the Land shall be deemed to be titled to the Lessor and subject to the terms and conditions of the Lease and this Lease Supplement.

This Lease Supplement shall constitute a mortgage, deed of trust, security agreement and financing statement under the laws of the state in which the Leased Property is situated. The maturity date of the obligations secured hereby shall be [\_\_\_\_\_] unless extended to not later than [\_\_\_\_\_].

For purposes of provisions of the Lease and this Lease Supplement related to the creation and enforcement of the Lease and this Lease Supplement as a security agreement and a fixture filing, Lessee is the debtor and Lessor is the secured party. The mailing addresses of the debtor (Lessee herein) and of the secured party (Lessor herein) from which information concerning

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security interests hereunder may be obtained are set forth on the signature pages hereto. A carbon, photographic or other reproduction of the Lease and this Lease Supplement or of any financing statement related to the Lease and this Lease Supplement shall be sufficient as a financing statement for any of the purposes referenced herein.

SECTION 3. Use of Property. At all times during the Term with respect to each Property, Lessee will comply with all obligations under and (to the extent no Event of Default exists and provided, that such exercise will not impair the value of such Property) shall be permitted to exercise all rights and remedies under, all operation and easement agreements and related or similar agreements applicable to such Property.

SECTION 4. Ratification; Incorporation by Reference. Except as specifically modified hereby, the terms and provisions of the Lease and the Operative Agreements are hereby ratified and confirmed and remain in full force and effect. The Lease is hereby incorporated herein by reference as though restated herein in its entirety.

SECTION 5. Original Lease Supplement. The single executed original of this Lease Supplement marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt of the Agent therefor on or following the signature page thereof shall be the original executed counterpart of this Lease Supplement (the "Original Executed Counterpart"). To the extent that this Lease Supplement constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease Supplement may be created through the transfer or possession of any counterpart other than the Original Executed Counterpart.

SECTION 6. GOVERNING LAW. THIS LEASE SUPPLEMENT SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED TO AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NORTH CAROLINA, EXCEPT TO THE EXTENT THE LAWS OF THE STATE WHERE A PARTICULAR PROPERTY IS LOCATED ARE REQUIRED TO APPLY.

SECTION 7. Mortgage; Power of Sale. Without limiting any other remedies set forth in the Lease, in the event that a court of competent jurisdiction rules that the Lease constitutes a mortgage, deed of trust or other secured financing as is the intent of the parties, then Lessor and Lessee agree that Lessee hereby grants a Lien against the Leased Property WITH POWER OF SALE, and that, upon the occurrence of any Lease Event of Default, Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Leased Property.

SECTION 8. Counterpart Execution. This Lease Supplement may be executed in any number of counterparts and by each of the parties hereto in separate counterparts, all such counterparts together constituting but one (1) and the same instrument.

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For purposes of the provisions of this Lease Supplement concerning this Lease Supplement constituting a security agreement and fixture filing, the addresses of the debtor (Lessee herein) and the secured party (Lessor herein), from whom information may be obtained about this Lease Supplement, are as set forth on the signature pages hereto.



Notary Public

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
                                  )       ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Supplement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of FIRST UNION NATIONAL BANK, a national banking association.

[Notarial Seal]

Notary Public

My commission expires: \_\_\_\_\_

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SCHEDULE 1  
TO LEASE SUPPLEMENT NO. \_\_\_\_\_

(Description of the Leased Property)

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EXHIBIT B TO THE LEASE

[MODIFY OR SUBSTITUTE SHORT FORM LEASE AS  
NECESSARY FOR LOCAL LAW REQUIREMENTS]

Recordation requested by:

Moore & Van Allen, PLLC

After recordation return to:

Moore & Van Allen, PLLC (LSJ)  
100 North Tryon Street, Floor 47  
Charlotte, NC 28202-4003

Space above this line  
for Recorder's use

MEMORANDUM OF LEASE AGREEMENT  
AND  
LEASE SUPPLEMENT NO. \_\_\_\_\_

THIS MEMORANDUM OF LEASE AGREEMENT AND LEASE SUPPLEMENT NO. \_\_\_\_\_ ("Memorandum"), dated as of \_\_\_\_\_, 199\_\_, is by and between FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, not individually, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1, with an office at 79 South Main Street, Salt Lake City, Utah 84111 (hereinafter referred to as "Lessor") and DOLLAR TREE DISTRIBUTION, INC., a Virginia corporation with an office at 500 Volvo Parkway, Chesapeake, Virginia 23320 (hereinafter referred to as "Lessee").

WITNESSETH:

That for value received, Lessor and Lessee do hereby covenant, promise and agree as follows:

1. Demised Premises and Date of Lease. Lessor has leased to Lessee, and Lessee has leased from Lessor, for the Term (as hereinafter defined), certain real property and other property located in \_\_\_\_\_, which is described in the attached Schedule 1 (the "Property"), pursuant to the terms of a Lease Agreement between Lessor and Lessee dated as of June 2, 1999 (as such may be amended, modified, extended, supplemented, restated and/or replaced from time to time, "Lease") and a Lease Supplement No. \_\_\_\_\_ between Lessor and Lessee dated as of \_\_\_\_\_ (the "Lease Supplement").

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The Lease and the Lease Supplement shall constitute a mortgage, deed of trust and security agreement and financing statement under the laws of the state in which the Property is situated. The maturity date of the obligations secured

thereby shall be \_\_\_\_\_, unless extended to not later than \_\_\_\_\_.

For purposes of provisions of the Lease and the Lease Supplement related to the creation and enforcement of the Lease and the Lease Supplement as a security agreement and a fixture filing, Lessee is the debtor and Lessor is the secured party. The mailing addresses of the debtor (Lessee herein) and of the secured party (Lessor herein) from which information concerning security interests hereunder may be obtained are as set forth on the signature pages hereof. A carbon, photographic or other reproduction of this Memorandum or of any financing statement related to the Lease and the Lease Supplement shall be sufficient as a financing statement for any of the purposes referenced herein.

2. Term, Renewal, Extension and Purchase Option. The term of the Lease for the Property ("Term") commenced as of \_\_\_\_\_, 19\_\_ and shall end as of \_\_\_\_\_, 19\_\_, unless the Term is extended or earlier terminated in accordance with the provisions of the Lease. The Lease contains provisions for renewal and extension. The tenant has a purchase option under the Lease.

3. Tax Payer Numbers.

Lessor's tax payer number: 87-6243032

Lessee's tax payer number: 54-1737649

4. Mortgage; Power of Sale. Without limiting any other remedies set forth in the Lease, in the event that a court of competent jurisdiction rules that the Lease constitutes a mortgage, deed of trust or other secured financing as is the intent of the parties, then Lessor and Lessee agree that Lessee has granted, pursuant to the terms of the Lease and the Lease Supplement, a Lien against the Property WITH POWER OF SALE, and that, upon the occurrence and during the continuance of any Lease Event of Default, Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Property.

5. Effect of Memorandum. The purpose of this instrument is to give notice of the Lease and the Lease Supplement and their respective terms, covenants and conditions to the same extent as if the Lease and the Lease Supplement were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease or the Lease Supplement and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or the Lease Supplement or determine the intent of the parties under the Lease or the Lease Supplement.

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[The remainder of this page has been intentionally left blank.]

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IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first written.

LESSOR:

FIRST SECURITY BANK, NATIONAL  
ASSOCIATION, not individually, but solely  
as the Owner Trustee under the DTSD Realty  
Trust 1999-1, as Lessor

By:  
Name:  
Title:

First Security Bank, National Association  
79 South Main Street  
Salt Lake City, Utah 84111  
Attn: Val T. Orton  
Vice President

LESSEE:

DOLLAR TREE DISTRIBUTION, INC.,  
as Lessee

By:  
Name:  
Title:





PARTICIPATION AGREEMENT

Dated as of June 2, 1999

among

DOLLAR TREE DISTRIBUTION, INC.,  
as the Construction Agent and as the Lessee,

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually, except as expressly  
stated herein, but solely as the Owner Trustee  
under the DTSD Realty Trust 1999-1,

and

FIRST UNION NATIONAL BANK,  
as the Lender and the Holder

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EXHIBITS

- A - Form of Requisition - Sections 4.2, 5.2, 5.3 and 5.4
  - B - Form of Outside Counsel Opinion for the Lessee - Section 5.3(j)
  - C - Form of Officer's Certificate - Section 5.3(w)
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  - K - Description of Material Litigation - Section 6.2(d)
  - L - State of Incorporation/Formation and Principal Place of Business of Each Guarantor - Section 6.2(i)
  - M - Form of Officer's Compliance Certificate - Section 8.3(k)
- Appendix A - Rules of Usage and Definitions

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, this "Agreement") is by and among DOLLAR TREE DISTRIBUTION, INC., a Virginia, corporation (the "Lessee" or the "Construction Agent"); the various parties hereto from time to time as guarantors (subject to the definitions of Guarantors in Appendix A hereto, individually a "Guarantor" and collectively, the

"Guarantors"); FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, not individually (in its individual capacity, the "Trust Company"), except as expressly stated herein, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1 (the "Owner Trustee", the "Borrower" or the "Lessor"); and FIRST UNION NATIONAL BANK, a national banking association, as lender and holder (together with its successors and assigns, "Bank"). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings set forth in Appendix A hereto.

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

#### SECTION 1. THE LOANS.

Subject to the terms and conditions of this Agreement and the other Operative Agreements and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, the Bank has agreed to make Loans to the Lessor from time to time in an aggregate principal amount of up to the aggregate amount of the Commitments in order for the Lessor to acquire the Properties and certain Improvements, to develop and construct certain Improvements in accordance with the Agency Agreement and the terms and provisions hereof and for the other purposes described herein, and in consideration of the receipt of proceeds of the Loans, the Lessor will issue the Notes. The Loans shall be made and the Notes shall be issued pursuant to the Credit Agreement. Pursuant to Section 5 of this Agreement and Section 2 of the Credit Agreement, the Loans will be made to the Lessor from time to time at the request of the Construction Agent in consideration for the Construction Agent agreeing for the benefit of the Lessor, pursuant to the Agency Agreement, to acquire the Properties, to acquire the Equipment, to construct certain Improvements and to cause the Lessee to lease the Properties, each in accordance with the Agency Agreement and the other Operative Agreements. The Loans and the obligations of the Lessor under the Credit Agreement shall be secured by the Collateral.

#### SECTION 2. HOLDER ADVANCES.

Subject to the terms and conditions of this Agreement and the other Operative Agreements and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, on each date Advances are requested to be made in accordance with Section 5 hereof, the Bank shall make a Holder Advance to the Lessor with respect to the DTSD Realty Trust 1999-1 in an amount in immediately available funds such that

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the aggregate of all Holder Advances on such date shall be three percent (3%) of the amount of the Requested Funds on such date; provided, that the Bank shall not be obligated for any Holder Advance in excess of the Available Holder Commitment. No prepayment or any other payment with respect to any Advance shall be permitted such that the Holder Advance with respect to such Advance is less than three percent (3%) of the outstanding amount of such Advance, except in connection with termination or expiration of the Term or in connection with the exercise of remedies relating to the occurrence of a Lease Event of Default.

#### SECTION 3. SUMMARY OF TRANSACTIONS.

##### 3.1 Operative Agreements.

On the date hereof, each of the respective parties hereto and thereto shall execute and deliver this Agreement, the Lease, each applicable Ground Lease, the Agency Agreement, the Credit Agreement, the Notes, the Trust Agreement, the Certificates, the Security Agreement, each applicable Mortgage Instrument and such other documents, instruments, certificates and opinions of counsel as agreed to by the parties hereto.

##### 3.2 Property Purchase.

On each Property Closing Date and subject to the terms and conditions of this Agreement (a) the Bank will make a Holder Advance in accordance with Sections 2 and 5 of this Agreement and the terms and provisions of the Trust Agreement, (b) the Bank will make Loans in accordance with Sections 1 and 5 of this Agreement and the terms and provisions of the Credit Agreement, (c) the Lessor will purchase and acquire good and marketable title to or ground lease pursuant to a Ground Lease, the applicable Property, each to be within an Approved State, identified by the Construction Agent, in each case pursuant to a Deed, Bill of Sale or Ground Lease, as the case may be, and grant the Bank a lien on such Property by execution of the required Security Documents and (d) the Bank, the Lessee and the Lessor shall execute and deliver a Lease Supplement relating to such Property.

##### 3.3 Construction of Improvements; Commencement of Basic Rent.

Construction Advances will be made with respect to particular Improvements to be constructed and with respect to ongoing Work regarding the Equipment and construction of particular Improvements, in each case, pursuant to the terms and conditions of this Agreement and the Agency Agreement. The Construction Agent will act as a construction agent on behalf of the Lessor respecting the Work regarding the Equipment, the construction of such Improvements and the expenditures of the Construction Advances related to the foregoing. The Construction Agent shall promptly notify the Lessor upon Completion of the Improvements and the Lessee shall commence to pay Basic Rent as of the Rent Commencement Date.

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#### SECTION 4. THE CLOSINGS.

##### 4.1 Initial Closing Date.

All documents and instruments required to be delivered on the Initial Closing Date shall be delivered at the offices of Moore & Van Allen, PLLC, Charlotte, North Carolina, or at such other location as may be determined by the Lessor, the Bank and the Lessee.

##### 4.2 Initial Closing Date; Property Closing Dates; Acquisition Advances; Construction Advances.

The Construction Agent shall deliver to the Bank a requisition (together with invoices for, or other reasonably satisfactory evidence of, any Transaction Expenses and other fees, expenses and disbursements referred to in Section 7.1 that are to be paid with the applicable Advance, a "Requisition"), in the form attached hereto as Exhibit A or in such other form as is satisfactory to the Bank, in its reasonable discretion, in connection with (a) the Transaction Expenses and other fees, expenses and disbursements payable, pursuant to Section 7.1, by the Lessor and (b) each Acquisition Advance pursuant to Section 5.3 and (c) each Construction Advance pursuant to Section 5.4. Notwithstanding the preceding sentence, the parties hereto agree that no Requisition shall be required for the Lenders and the Holders to make Advances pursuant to or in connection with Sections 7.1 and 11.5.

#### SECTION 5. FUNDING OF ADVANCES; CONDITIONS PRECEDENT; REPORTING REQUIREMENTS ON COMPLETION DATE; THE LESSEE'S DELIVERY OF NOTICES; RESTRICTIONS ON LIENS.

##### 5.1 General.

(a) To the extent funds have been advanced by the Bank to the Lessor as Loans and as Holder Advances, the Lessor will use such funds from time to time in accordance with the terms and conditions of this Agreement and the other Operative Agreements (i) at the direction of the Construction Agent to acquire the Properties in accordance with the terms of this Agreement, the Agency Agreement and the other Operative Agreements, (ii) to make Advances to the Construction Agent to permit the acquisition, testing, engineering, installation, development, construction, modification, design, and renovation, as applicable, of the Properties (or components thereof) in accordance with the terms of the Agency Agreement and the other Operative Agreements, and (iii) to pay Transaction Expenses, fees, expenses and other disbursements payable by the Lessor under Section 7.1.

(b) In lieu of the payment of interest on the Loans and Holder Yield on the Holder Advances on any Scheduled Interest Payment Date with respect to any Property during the period prior to the Rent Commencement Date with respect to such Property, (i) each Loan shall automatically be increased by the amount of interest accrued and unpaid on such Loan for such period (except to the extent that at any time such increase

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would cause such Loan to exceed the Available Commitment), and (ii) each Holder Advance shall automatically be increased by the amount of Holder Yield accrued and unpaid on such Holder Advance for such period (except to the extent that at any time such increase would cause the Holder Advance to exceed the Available Holder Commitment). Such increases in a Loan and a Holder Advance shall occur without any disbursement of funds by any Person.

##### 5.2 Procedures for Funding.

(a) The Construction Agent shall designate the date for Advances hereunder in accordance with the terms and provisions hereof;

provided, however, it is understood and agreed that no more than two (2) Advances (excluding any conversion and/or continuation of any Loans or Holder Advances) may be requested during any calendar month. Not less than (i) three (3) Business Days prior to the Initial Closing Date and (ii) three (3) Business Days prior to the date on which any Acquisition Advance or Construction Advance is to be made, the Construction Agent shall deliver to the Bank, (A) with respect to the Initial Closing Date and each Acquisition Advance, a Requisition as described in Section 4.2 hereof (including without limitation a legal description of the Land, if any, a schedule of the Improvements, if any, and a schedule of the Equipment, if any, acquired or to be acquired on such date, and a schedule of the Work, if any, to be performed, each of the foregoing in a form reasonably acceptable to the Bank) and (B) with respect to each Construction Advance, a Requisition identifying (among other things) the Property to which such Construction Advance relates.

(b) Each Requisition shall: (i) be irrevocable, (ii) request funds in an amount that is not in excess of the total aggregate of the Available Commitments plus the Available Holder Commitments at such time, and (iii) request that the Bank make Holder Advances and Loans to the Lessor for the payment of Transaction Expenses, Property Acquisition Costs (in the case of an Acquisition Advance) or other Property Costs (in the case of a Construction Advance) that have previously been incurred or are to be incurred on the date of such Advance to the extent such were not subject to a prior Requisition, in each case as specified in the Requisition.

(c) Subject to the satisfaction of the conditions precedent set forth in Sections 5.3 or 5.4, as applicable, on each Property Closing Date or the date on which the Construction Advance is to be made, as applicable, (i) the Bank shall make Loans to the Lessor in an aggregate amount equal to ninety-seven percent (97%) of the Requested Funds specified in any Requisition, up to an aggregate principal amount equal to the aggregate of the Available Commitments, (ii) the Bank shall make a Holder Advance based on its Holder Commitment in an amount such that the aggregate of all Holder Advances at such time shall be three percent (3%) of the balance of the Requested Funds specified in such Requisition, up to the aggregate advanced amount equal to the Available Holder Commitments; and (iii) the total amount of such Loans and Holder Advances made on such date shall (x) be used by the Lessor to pay Property Costs including Transaction Expenses within three (3) Business Days of the receipt by the Lessor of such

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Advance or (y) be advanced by the Lessor on the date of such Advance to the Construction Agent or the Lessee to pay Property Costs, as applicable. Notwithstanding that the Operative Agreements state that Advances shall be directed to the Lessor, each Advance shall in fact be directed to the Construction Agent (for the benefit of the Lessor) and applied by the Construction Agent (for the benefit of the Lessor) pursuant to the requirements imposed on the Lessor under the Operative Agreements.

(d) With respect to an Advance obtained by the Lessor to pay for Property Costs and/or Transaction Expenses or other costs payable under Section 7.1 hereof and not expended by the Lessor for such purpose on the date of such Advance, such amounts shall be held by the Lessor (or the Bank on behalf of the Lessor) until the applicable closing date or, if such closing date does not occur within three (3) Business Days of the date of the Lessor's receipt of such Advance, shall be applied regarding the applicable Advance to repay the Loans and the Holder Advances and, subject to the terms hereof, and of the Credit Agreement and the Trust Agreement, shall remain available for future Advances. Any such amounts held by the Lessor (or the Bank on behalf of the Lessor) shall be subject to the lien of the Security Agreement.

(e) All Operative Agreements which are to be delivered to the Lessor shall be delivered to the Bank, on behalf of the Lessor, and such items (except for Notes, Certificates, Bills of Sale, the Ground Leases and chattel paper originals, with respect to which in each case there shall be only one original) shall be delivered with originals sufficient for the Lessor and the Bank. All other items which are to be delivered to the Lessor shall be delivered to the Bank, on behalf of the Lessor, and such other items shall be held by the Bank. To the extent any such other items are requested in writing from time to time by the Lessor, the Bank shall provide a copy of such item.

(f) Notwithstanding the completion of any closing under this Agreement pursuant to Sections 5.3 or 5.4, each condition precedent in connection with any such closing may be subsequently enforced by the

Bank (unless such has been expressly waived in writing by the Bank).

5.3 Conditions Precedent for the Lessor and the Bank Relating to the Initial Closing Date and the Advance of Funds for the Acquisition of a Property.

The obligations (i) on the Initial Closing Date of the Lessor and the Bank to enter into the transactions contemplated by this Agreement, including without limitation the obligation to execute and deliver the applicable Operative Agreements to which each is a party on the Initial Closing Date, (ii) on the Initial Closing Date of the Bank to make Holder Advances and Loans in order to pay Transaction Expenses, fees, expenses and other disbursements payable by the Lessor under Section 7.1 of this Agreement and (iii) on a Property Closing Date for the purpose of providing funds to the Lessor necessary to pay the Transaction Expenses, fees, expenses and other disbursements payable by the Lessor under Section 7.1 of this Agreement and to acquire or ground lease a Property (an "Acquisition Advance"), in each case (with regard to the foregoing Sections 5.3(i), (ii) and (iii)) are subject to the satisfaction or waiver of the following conditions

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precedent on or prior to the Initial Closing Date or the applicable Property Closing Date, as the case may be (to the extent such conditions precedent require the delivery of any agreement, certificate, instrument, memorandum, legal or other opinion, appraisal, commitment, title insurance commitment, lien report or any other document of any kind or type, such shall be in form and substance satisfactory to the Bank, in its reasonable discretion; notwithstanding the foregoing, the obligations of each party shall not be subject to any conditions contained in this Section 5.3 which are required to be performed by such party):

(a) the correctness of the representations and warranties of the parties to this Agreement contained herein, in each of the other Operative Agreements and each certificate delivered pursuant to any Operative Agreement (including without limitation the Incorporated Representations and Warranties) on each such date;

(b) the performance by the parties to this Agreement of their respective agreements contained herein and in the other Operative Agreements to be performed by them on or prior to each such date;

(c) The Bank shall have received a fully executed counterpart copy of the Requisition, appropriately completed;

(d) [Reserved];

(e) the Construction Agent shall have delivered to the Bank a good standing certificate for the Construction Agent in the state where each such Property is located, the Deed with respect to the Land and existing Improvements (if any), a copy of the Ground Lease (if any), and a copy of the Bill of Sale with respect to the Equipment (if any), respecting such of the foregoing as are being acquired or ground leased on each such date with the proceeds of the Loans and Holder Advances or which have been previously acquired or ground leased with the proceeds of the Loans and Holder Advances;

(f) there shall not have occurred and be continuing any Default or Event of Default under any of the Operative Agreements and no Default or Event of Default under any of the Operative Agreements will have occurred after giving effect to the Advance requested by each such Requisition;

(g) the Construction Agent shall have delivered to the Bank title insurance commitments to issue policies respecting each such Property, with such endorsements as the Bank deems necessary, in favor of the Lessor and the Bank from a title insurance company acceptable to the Bank, but only with such title exceptions thereto as are acceptable to the Bank;

(h) the Construction Agent shall have delivered to the Bank an environmental site assessment respecting each such Property prepared by an independent recognized professional acceptable to the Bank and evidencing no pre-existing environmental condition with respect to which there is more than a remote risk of loss;

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(i) the Construction Agent shall have delivered to the Bank a survey (with a flood hazard certification) respecting each such Property prepared by (i) an independent recognized professional

acceptable to the Bank and (ii) in a manner and including such information as is required by the Bank;

(j) unless such an opinion has previously been delivered with respect to a particular state, the Construction Agent shall have caused to be delivered to the Bank a legal opinion in the form attached hereto as Exhibit B or in such other form as is reasonably acceptable to the Bank, prepared by counsel acceptable to the Bank;

(k) the Construction Agent shall have caused to be delivered to the Bank a Mortgage Instrument (in such form as is acceptable to the Bank), Lessor Financing Statements and Lender Financing Statements respecting each such Property, all fully executed and in recordable form;

(l) the Lessee shall have delivered to the Bank with respect to each such Property a Lease Supplement and a memorandum (or short form lease) regarding the Lease and such Lease Supplement in the form attached to the Lease as Exhibit B or in such other form as is acceptable to the Bank and suitable for recording;

(m) with respect to each Acquisition Advance, the sum of the Available Commitment plus the Available Holder Commitment (after deducting the Unfunded Amount, if any, and after giving effect to the Acquisition Advance) will be sufficient to pay all amounts payable therefrom;

(n) if any such Property is subject to a Ground Lease, the Construction Agent shall have caused a lease memorandum (or short form lease) to be delivered to the Bank for such Ground Lease and, if requested by the Bank, a landlord waiver and a mortgagee waiver (in each case, in such form as is acceptable to the Bank);

(o) counsel (acceptable to the Bank) for the ground lessor of each such Property subject to a Ground Lease shall have issued to the Lessor and the Bank its opinion;

(p) the Construction Agent shall have delivered to the Bank a preliminary Construction Budget for each such Property, if applicable;

(q) the Construction Agent shall have provided evidence to the Bank of insurance with respect to each such Property as provided in the Lease;

(r) the Construction Agent shall have caused an Appraisal regarding each such Property to be provided to the Bank from an appraiser satisfactory to the Bank;

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(s) the Construction Agent shall cause (i) Uniform Commercial Code lien searches, tax lien searches and judgment lien searches regarding the Lessee and each Credit Party to be conducted (and copies thereof to be delivered to the Bank) in such jurisdictions as determined by the Bank by a nationally recognized search company acceptable to the Bank and (ii) the liens referenced in such lien searches which are objectionable to the Bank to be either removed or otherwise handled in a manner satisfactory to the Bank;

(t) all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Agreements and/or documents related thereto shall have been paid or provisions for such payment shall have been made to the satisfaction of the Bank;

(u) each of the Operative Agreements to be entered into on such date shall have been duly authorized, executed and delivered by the parties thereto, and shall be in full force and effect, and the Bank shall have received a fully executed copy of each of the Operative Agreements;

(v) since the date of the most recent audited financial statements (as delivered pursuant to the requirements of the Lessee Credit Agreement) of the Lessee, there shall not have occurred any event, condition or state of facts which shall have or could reasonably be expected to have a Material Adverse Effect, other than as specifically contemplated by the Operative Agreements;

(w) as of the Initial Closing Date only, the Bank shall have received an Officer's Certificate, dated as of the Initial Closing Date, of the Lessee in the form attached hereto as Exhibit C or in such other form as is acceptable to the Bank;

(x) as of the Initial Closing Date only, the Bank shall have received (i) a certificate of the Secretary or an Assistant Secretary of each Credit Party, dated as of the Initial Closing Date, in the form attached hereto as Exhibit D or in such other form as is acceptable to the Bank and (ii) a good standing certificate (or local equivalent) from the respective states where such Credit Party is incorporated and where the principal place of business of such Credit Party is located;

(y) as of the Initial Closing Date only, there shall not have occurred any material adverse change in the consolidated assets, liabilities, operations, business or condition (financial or otherwise) of the Credit Parties (on a consolidated basis) from that set forth in the most recent audited consolidated financial statements of the Credit Parties which have been provided to the Bank;

(z) as of the Initial Closing Date only, the Bank shall have received an Officer's Certificate of the Lessor dated as of the Initial Closing Date in the form attached hereto as Exhibit E or in such other form as is acceptable to the Bank;

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(aa) as of the Initial Closing Date only, the Bank shall have received (i) a certificate of the Secretary, an Assistant Secretary, Trust Officer or Vice President of the Trust Company in the form attached hereto as Exhibit F or in such other form as is acceptable to the Bank and (ii) a good standing certificate from the Office of the Comptroller of the Currency;

(bb) as of the Initial Closing Date only, counsel for the Lessor acceptable to the Bank shall have issued to the Lessee and the Bank its opinion in the form attached hereto as Exhibit G or in such other form as is reasonably acceptable to the Bank; and

(cc) as of the Initial Closing Date only, the Construction Agent shall have caused to be delivered to the Bank a legal opinion in the form attached hereto as Exhibit H or in such other form as is acceptable to the Bank from counsel acceptable to the Bank;

5.4 Conditions Precedent for the Lessor and the Bank Relating to the Advance of Funds after the Acquisition Advance.

The obligations of the Bank to make Holder Advances and Loans in connection with all requests for Advances subsequent to the acquisition of a Property (and to pay the Transaction Expenses, fees, expenses and other disbursements payable by the Lessor under Section 7.1 of this Agreement in connection therewith) are subject to the satisfaction or waiver of the following conditions precedent (to the extent such conditions precedent require the delivery of any agreement, certificate, instrument, memorandum, legal or other opinion, appraisal, commitment, title insurance commitment, lien report or any other document of any kind or type, such shall be in form and substance satisfactory to the Bank, in its reasonable discretion; notwithstanding the foregoing, the obligations of each party shall not be subject to any conditions contained in this Section 5.4 which are required to be performed by such party):

(a) the correctness on such date of the representations and warranties of the parties to this Agreement contained herein, in each of the other Operative Agreements and in each certificate delivered pursuant to any Operative Agreement (including without limitation the Incorporated Representations and Warranties);

(b) the performance by the parties to this Agreement of their respective agreements contained herein and in the other Operative Agreements to be performed by them on or prior to each such date;

(c) the Bank shall have received a fully executed counterpart of the Requisition, appropriately completed;

(d) based upon the applicable Construction Budget which shall satisfy the requirements of this Agreement, the Available Commitments and the Available Holder Commitment (after deducting the Unfunded Amount) will be sufficient to complete the Improvements;

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(e) there shall not have occurred and be continuing any Default or Event of Default under any of the Operative Agreements and no Default or Event of Default under any of the Operative Agreements will have occurred after giving effect to the Construction Advance requested by the applicable Requisition;



(f) the title insurance policy delivered in connection with the requirements of Section 5.3(g) shall provide for (or shall be endorsed to provide for) insurance in an amount at least equal to the maximum total Property Cost indicated by the Construction Budget referred to in subparagraph (d) above and there shall be no title change or exception objectionable to the Bank; and

(g) the Construction Agent shall have delivered to the Bank copies of the Plans and Specifications for the applicable Improvements;

(h) all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Agreements shall have been paid or provisions for such payment shall have been made to the satisfaction of the Bank;

(i) [reserved];

(j) in the opinion of the Bank and its counsel, the transactions contemplated by the Operative Agreements do not and will not subject the Lessor or the Bank to any adverse regulatory prohibitions, constraints, penalties or fines.

#### 5.5 Additional Reporting and Delivery Requirements on Completion Date and on Construction Period Termination Date.

On or prior to the Completion Date for each Property, the Construction Agent shall deliver to the Bank an Officer's Certificate in the form attached hereto as Exhibit I or in such other form as is acceptable to the Bank. Furthermore, on or prior to the Completion Date for each Property, the Construction Agent shall deliver or cause to be delivered to the Bank (unless previously delivered to the Bank) originals of the following, each of which shall be in form and substance acceptable to the Bank, in its reasonable discretion: (v) a title insurance endorsement regarding the title insurance policy delivered in connection with the requirements of Section 5.3(g), but only to the extent such endorsement is necessary to provide for insurance in an amount at least equal to the maximum total Property Cost and, if endorsed, the endorsement shall not include a title change or exception objectionable to the Bank; (w) an as-built survey for such Property, (x) insurance certificates respecting such Property as required hereunder and under the Lease Agreement, and (y) if requested by the Bank, amendments to the Lessor Financing Statements executed by the appropriate parties. In addition, on the Completion Date for such Property the Construction Agent covenants and agrees that the recording fees, documentary stamp taxes or similar amounts required to be paid in connection with the related Mortgage Instrument shall have been paid in an amount required by applicable law, subject, however, to the obligations of the Bank to fund such costs to the extent required pursuant to Section 7.1.

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#### 5.6 The Construction Agent Delivery of Construction Budget Modifications.

The Construction Agent covenants and agrees to deliver to the Bank each month notification of any modification to any Construction Budget regarding any Property if such modification increases the cost to construct such Property; provided no Construction Budget may be increased unless (a) the title insurance policies referenced in Section 5.3(g) are also modified or endorsed, if necessary, to provide for insurance in an amount that satisfies the requirements of Section 5.4(f) of this Agreement and (b) after giving effect to any such amendment, the Construction Budget remains in compliance with the requirements of Section 5.4(d) of this Agreement.

#### 5.7 Restrictions on Liens.

On each Property Closing Date, the Construction Agent shall cause each Property acquired by the Lessor on such date to be free and clear of all Liens except those referenced in Sections 6.2(c)(ii) and 6.2(c)(iii). On each date a Property is either sold to a third party in accordance with the terms of the Operative Agreements or, pursuant to Section 22.1(a) of the Lease Agreement, retained by the Lessor, the Lessee shall cause such Property to be free and clear of all Liens (other than Lessor Liens and such other Liens that are expressly set forth as title exceptions on the title commitment issued under Section 5.3(g) with respect to such Property, to the extent such title commitment has been approved by the Bank).

#### 5.8 Payments.

All payments of principal, interest, Holder Advances, Holder Yield and other amounts to be made by the Construction Agent or the Lessee under this Agreement or any other Operative Agreements (excluding Excepted Payments which shall be paid directly to the party to whom such payments are owed) shall be made to the Bank at the office designated by the Bank from time to time in Dollars and in immediately available funds, without setoff, deduction, or

counterclaim. Subject to the definition of "Interest Period" in Appendix A attached hereto, whenever any payment under this Agreement or any other Operative Agreements shall be stated to be due on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time in such case shall be included in the computation of interest, Holder Yield and fees payable pursuant to the Operative Agreements, as applicable and as the case may be.

#### 5.9 Joinder Agreement Requirements.

Each Domestic Subsidiary formed or acquired subsequent to the Initial Closing Date shall become a Guarantor and shall satisfy the following conditions within thirty (30) days after the formation or acquisition of such Domestic Subsidiary:

(a) such Domestic Subsidiary shall execute and deliver to Bank a Joinder Agreement in the form attached hereto as EXHIBIT J;

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(b) such Domestic Subsidiary shall have delivered to Bank (x) an Officer's Certificate of such Domestic Subsidiary in the form attached hereto as EXHIBIT C, (y) a certificate of the Secretary or an Assistant Secretary of such Domestic Subsidiary in the form attached hereto as EXHIBIT D and (z) good standing certificates (or local equivalent) from the respective states where such Domestic Subsidiary is incorporated or otherwise organized and where the principal place of business of such Domestic Subsidiary is located as to its good standing in each such state;

(c) such Domestic Subsidiary shall have delivered to Bank an opinion of counsel (acceptable to Bank) in the form attached hereto as EXHIBIT H; and

(d) Bank shall have received such other documents, certificates and information as Bank shall have reasonably requested.

#### 5.10 Maintenance of the Lessee as a Wholly-Owned Entity.

From the Initial Closing Date and thereafter until such time as all obligations of all Credit Parties under the Operative Agreements have been satisfied and performed in full, Dollar Tree Stores, Inc. shall retain the Lessee as a Wholly-Owned Entity.

#### 5.11 Unilateral Right to Increase the Holder Commitments and the Lender Commitments.

Notwithstanding any other provision of any Operative Agreement or any objection by any Person (including without limitation any objection by any Credit Party), the Bank, in its sole discretion, may unilaterally elect to increase its Holder Commitment and its Lender Commitment in order to fund amounts due and owing pursuant to Sections 7.1 and 11.5.

### SECTION 6. REPRESENTATIONS AND WARRANTIES.

#### 6.1 Representations and Warranties of the Borrower.

Effective as of the Initial Closing Date and the date of each Advance, the Trust Company in its individual capacity and as the Borrower, as indicated, represents and warrants (in addition to any representations or warranties made in any Officer's or Secretary's Certificate delivered pursuant hereto, which representations and warranties are incorporated herein by reference) to each of the other parties hereto that the execution, delivery and performance of each Operative Agreement to which it is or will be a party, either in its individual capacity or (assuming due authorization, execution and delivery of the Trust Agreement by the Bank) as the Owner Trustee, as the case may be, has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof (i) does or will require any approval or

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consent of any trustee or holders of any of its indebtedness or obligations, (ii) does or will contravene any Legal Requirement relating to its banking or trust powers, (iii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any of its property under, (A) its charter or by-laws, or (B) any indenture, mortgage, chattel mortgage,

deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it is a party or by which it or its properties may be bound or affected, which contravention, breach, default or Lien under clause (B) would materially and adversely affect its ability, in its individual capacity or as the Owner Trustee, to perform its obligations under the Operative Agreements to which it is a party or (iv) does or will require any Governmental Action by any Governmental Authority regulating its banking or trust powers.

## 6.2 Representations and Warranties of Each Credit Party.

Effective as of the Initial Closing Date, the date of each Advance, the date each Domestic Subsidiary delivers a Joinder Agreement and the Rent Commencement Date, each Credit Party represents and warrants to each of the other parties hereto that:

(a) The Lessee has delivered to the Bank the financial statements and other reports referred to in Section 7.4 of the Lessee Credit Agreement;

(b) The execution and delivery by each Credit Party of this Agreement and the other applicable Operative Agreements as of such date and the performance by each Credit Party of its respective obligations under this Agreement and the other applicable Operative Agreements are within the corporate powers of each Credit Party, have been duly authorized by all necessary corporate action on the part of each Credit Party (including without limitation any necessary shareholder action), have been duly executed and delivered, have received all necessary governmental approval, and do not and will not (i) violate any Legal Requirement which is binding on any Credit Party or any of their Subsidiaries, (ii) contravene or conflict with, or result in a breach of, any provision of the Articles of Incorporation, By-Laws or other organizational documents of any Credit Party or any of their Subsidiaries or of any agreement, indenture, instrument or other document which is binding on any Credit Party or any of their Subsidiaries or (iii) result in, or require, the creation or imposition of any Lien (other than pursuant to the terms of the Operative Agreements) on any asset of any Credit Party or any of their Subsidiaries;

(c) (i) This Agreement and the other applicable Operative Agreements, executed prior to and as of such date by each Credit Party, constitute the legal, valid and binding obligation of such Credit Party, as applicable, enforceable against such Credit Party, in accordance with their terms. Each Credit Party has executed the various Operative Agreements required to be executed by such Credit Party as of such date;

(ii) The Security Documents create, as security for the Obligations (as such term is defined in the Security Agreement), valid and enforceable security interests in, and Liens on, all of the Collateral, in favor of the Bank, and such security interests and

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Liens are subject to no other Liens other than Liens that are expressly set forth as title exceptions on the title commitment issued under Section 5.3(g) with respect to the applicable Property, to the extent such title commitment has been approved by the Bank. Upon recordation of the Mortgage Instrument in the real estate recording office identified by the Construction Agent or the Lessee, the Lien created by the Mortgage Instrument in the real property described therein shall be a perfected first priority mortgage Lien on such real property (or, in the case of a Ground Lease, the leasehold estate under such Ground Lease) in favor of the Bank. To the extent that the security interests in the portion of the Collateral comprised of personal property can be perfected by filing in the filing offices identified by the Construction Agent or the Lessee, upon filing of the Lender Financing Statements in such filing offices, the security interests created by the Security Agreement shall be perfected first priority security interests in such personal property in favor of the Bank; and

(iii) The Lease Agreement creates, as security for the obligations of the Lessee under the Lease Agreement, valid and enforceable security interests in, and Liens on, each Property leased thereunder, in favor of the Lessor, and such security interests and Liens are subject to no other Liens other than Liens that are expressly set forth as title exceptions on the title commitment issued under Section 5.3(g) with respect to the applicable Property, to the extent such title commitment has been approved by the Bank. Upon recordation of the memorandum of the Lease Agreement and the memorandum of a Ground Lease (or, in either case, a short form lease) in the real estate

recording office identified by the Construction Agent or the Lessee, the Lien created by the Lease Agreement in the real property described therein shall be a perfected first priority mortgage Lien on such real property (or, in the case of a Ground Lease, the leasehold estate under such Ground Lease) in favor of the Bank. To the extent that the security interests in the portion of any Property comprised of personal property can be perfected by the filing in the filing offices identified by the Construction Agent or the Lessee upon filing of the Lessor Financing Statements in such filing offices, a security interest created by the Lease Agreement shall be perfected first priority security interests in such personal property in favor of the Lessor, which rights pursuant to the Lessor Financing Statements are assigned to the Bank;

(d) There are no material actions, suits or proceedings pending or, to our knowledge, threatened against any Credit Party in any court or before any Governmental Authority (nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority to set aside, restrain, enjoin or prevent the full performance of any Operative Agreement or any transaction contemplated thereby) that (i) concern any Property or any Credit Party's interest therein or (ii) question the validity or enforceability of any Operative Agreement to which any Credit Party is a party or the overall transaction described in the Operative Agreements to which any Credit Party is a party; provided, for purposes of disclosure, each Credit Party has described the litigation set forth on Exhibit K;

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(e) No Governmental Action by any Governmental Authority or other authorization, registration, consent, approval, waiver, notice or other action by, to or of any other Person pursuant to any Legal Requirement, contract, indenture, instrument or agreement or for any other reason is required to authorize or is required in connection with (i) the execution, delivery or performance of any Operative Agreement, (ii) the legality, validity, binding effect or enforceability of any Operative Agreement, (iii) the acquisition, ownership, construction, completion, occupancy, operation, leasing or subleasing of any Property or (iv) any Advance, in each case, except those which have been obtained and are in full force and effect;

(f) Upon the execution and delivery of each Lease Supplement to the Lease, (i) the Lessee will have unconditionally accepted the Property subject to the Lease Supplement and will have a valid and subsisting leasehold interest in such Property, subject only to the Permitted Liens, and (ii) no offset will exist with respect to any Rent or other sums payable under the Lease;

(g) Except as otherwise contemplated by the Operative Agreements, the Construction Agent shall not use the proceeds of any Holder Advance or Loan for any purpose other than the purchase and/or lease of the Properties, the acquisition, installation and testing of the Equipment, the construction of Improvements and the payment of Transaction Expenses and the fees, expenses and other disbursements referenced in Section 7.1 of this Agreement, in each case which accrue prior to the Rent Commencement Date with respect to a particular Property;

(h) All information heretofore or contemporaneously herewith furnished by the Credit Parties or their Subsidiaries to the Bank or the Owner Trustee for purposes of or in connection with this Agreement and the transactions contemplated hereby is, and all information hereafter furnished by or on behalf of the Credit Parties or their Subsidiaries to the Bank or the Owner Trustee pursuant hereto or in connection herewith will be, true and accurate in every material respect on the date as of which such information is dated or certified, and such information, taken as a whole, does not and will not omit to state any material fact necessary to make such information, taken as a whole, not misleading;

(i) The principal place of business, chief executive office and office of the Construction Agent and the Lessee where the documents, accounts and records relating to the transactions contemplated by this Agreement and each other Operative Agreement are kept are located at 500 Volvo Parkway, Chesapeake, Virginia 23320 and the states of formation and the chief executive offices of each other Credit Party are located at the places set forth in EXHIBIT L;

(j) The representations and warranties of each Credit Party set forth in any of the Operative Agreements (including the Incorporated Representations and Warranties) are true and correct in all material respects on and as of each such date as if made on and as of such date. Each Credit Party is in all material respects in

compliance with its obligations under the Operative Agreements and there exists no Default or Event of

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Default under any of the Operative Agreements which is continuing and which has not been cured within any cure period expressly granted under the terms of the applicable Operative Agreement or otherwise waived in accordance with the applicable Operative Agreement. No Default or Event of Default will occur under any of the Operative Agreements as a result of, or after giving effect to, the Advance requested by the Requisition on the date of each Advance; and

(k) As of each Property Closing Date, the date of each subsequent Advance and the Rent Commencement Date only, no portion of any Property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, or if any such Property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, then flood insurance has been obtained for such Property in accordance with Section 14.2(b) of the Lease and in accordance with the National Flood Insurance Act of 1968, as amended

#### SECTION 6B. GUARANTY

##### 6B.1 Guaranty of Payment and Performance.

Subject to Section 6B.7, each Guarantor hereby, jointly and severally, unconditionally guarantees to each Financing Party the prompt payment and performance of the Company Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) or when such is otherwise to be performed; provided, notwithstanding the foregoing, the obligations of the Guarantors under this Section 6B shall not constitute a direct guaranty of the indebtedness of the Lessor evidenced by the Notes but rather a guaranty of the Company Obligations arising under the Operative Agreements. This Section 6B is a guaranty of payment and performance and not of collection and is a continuing guaranty and shall apply to all Company Obligations whenever arising. All rights granted to the Financing Parties under this Section 6B shall be subject to the provisions of Section 8.2(h) and 8.6.

##### 6B.2 Obligations Unconditional.

Each Guarantor agrees that the obligations of the Guarantors hereunder are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Operative Agreements, or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guarantee of or security for any of the Company Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety, guarantor or co-obligor, it being the intent of this Section 6B.2 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that this Section 6B may be enforced by the Financing Parties without the necessity at any time of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse to the Notes, the Certificates or any other of the Operative Agreements or any collateral, if any, hereafter securing the

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Company Obligations or otherwise and each Guarantor hereby waives the right to require the Financing Parties to proceed against the Construction Agent, the Lessee or any other Person (including without limitation a co-guarantor) or to require the Financing Parties to pursue any other remedy or enforce any other right. Each Guarantor further agrees that it hereby waives any and all right of subrogation, indemnity, reimbursement or contribution against the Lessee and the Construction Agent or any other Guarantor of the Company Obligations for amounts paid under this Section 6B until such time as the Loans, Holder Advances, accrued but unpaid interest, accrued but unpaid Holder Yield and all other amounts owing under the Operative Agreements have been paid in full. Without limiting the generality of the waiver provisions of this Section 6B, each Guarantor hereby waives any rights to require the Financing Parties to proceed against the Construction Agent, the Lessee or any co-guarantor or to require Lessor to pursue any other remedy or enforce any other right, including without limitation, any and all rights under N.C. Gen. Stat. ss. 26-7 through 26-9. Each Guarantor further agrees that nothing contained herein shall prevent the Financing Parties from suing on any Operative Agreement or foreclosing any security interest in or Lien on any collateral, if any, securing the Company Obligations or from exercising any other rights available to it under any Operative Agreement, or any other instrument of security, if any, and the exercise of any of the aforesaid rights and the completion of any foreclosure

proceedings shall not constitute a discharge of any Guarantor's obligations hereunder; it being the purpose and intent of each Guarantor that its obligations hereunder shall be absolute, independent and unconditional under any and all circumstances; provided that any amounts due under this Section 6B which are paid to or for the benefit of any Financing Party shall reduce the Company Obligations by a corresponding amount (unless required to be rescinded at a later date). Neither any Guarantor's obligations under this Section 6B nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Construction Agent or the Lessee or by reason of the bankruptcy or insolvency of the Construction Agent or the Lessee. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Company Obligations and notice of or proof of reliance by any Financing Party upon this Section 6B or acceptance of this Section 6B. The Company Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Section 6B. All dealings between the Construction Agent, the Lessee and any of the Guarantors, on the one hand, and the Financing Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon this Section 6B.

#### 6B.3 Modifications.

Each Guarantor agrees that (a) all or any part of the security now or hereafter held for the Company Obligations, if any, may be exchanged, compromised or surrendered from time to time; (b) no Financing Party shall have any obligation to protect, perfect, secure or insure any such security interests, liens or encumbrances now or hereafter held, if any, for the Company Obligations or the properties subject thereto; (c) the time or place of payment of the Company Obligations may be changed or extended, in whole or in part, to a time certain or otherwise, and may be renewed or accelerated, in whole or in part; (d) the Construction Agent, the Lessee and any other party liable for payment under the Operative Agreements may be granted indulgences

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generally; (e) any of the provisions of the Notes, the Certificates or any of the other Operative Agreements may be modified, amended or waived; (f) any party (including any co-guarantor) liable for the payment thereof may be granted indulgences or be released; and (g) any deposit balance for the credit of the Construction Agent, the Lessee or any other party liable for the payment of the Company Obligations or liable upon any security therefor may be released, in whole or in part, at, before or after the stated, extended or accelerated maturity of the Company Obligations, all without notice to or further assent by such Guarantor, which shall remain bound thereon, notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release.

#### 6B.4 Waiver of Rights.

Each Guarantor expressly waives to the fullest extent permitted by applicable law: (a) notice of acceptance of this Section 6B by any Financing Party and of all extensions of credit or other Advances to the Construction Agent and the Lessee by Bank pursuant to the terms of the Operative Agreements; (b) presentment and demand for payment or performance of any of the Company Obligations; (c) protest and notice of dishonor or of default with respect to the Company Obligations or with respect to any security therefor; (d) notice of any Financing Party obtaining, amending, substituting for, releasing, waiving or modifying any security interest, lien or encumbrance, if any, hereafter securing the Company Obligations, or any Financing Party's subordinating, compromising, discharging or releasing such security interests, liens or encumbrances, if any; and (e) all other notices to which such Guarantor might otherwise be entitled. Notwithstanding anything to the contrary herein, (i) each Guarantor's payments hereunder shall be due five (5) Business Days after written demand by the Bank for such payment (unless the Company Obligations are automatically accelerated pursuant to the applicable provisions of the Operative Agreements in which case the Guarantors' payments shall be automatically due) and (ii) any modification of the Operative Agreements which has the effect of increasing the Company Obligations shall not be enforceable against a Guarantor unless such Guarantor executes the document evidencing such modification or otherwise reaffirms its guaranty in writing in connection with such modification.

#### 6B.5 Reinstatement.

The obligations of the Guarantors under this Section 6B shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Company Obligations is rescinded or must be otherwise restored by any holder of any of the Company Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify each Financing Party on demand for all reasonable costs and expenses (including, without limitation, reasonable fees of counsel) incurred by any Financing Party in connection with such rescission or restoration, including without limitation any such costs and

expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

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6B.6 Remedies.

The Guarantors agree that, as between the Guarantors, on the one hand, and each Financing Party, on the other hand, the Company Obligations may be declared to be forthwith due and payable as provided in the applicable provisions of the Operative Agreements (and shall be deemed to have become automatically due and payable in the circumstances provided therein) notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing such Company Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or such Company Obligations being deemed to have become automatically due and payable), such Company Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors in accordance with the applicable provisions of the Operative Agreements.

6B.7 Limitation of Guaranty.

Notwithstanding any provision to the contrary contained herein or in any of the other Operative Agreements, to the extent the obligations of any Guarantor shall be adjudicated to be invalid or unenforceable for any reason (including without limitation because of any applicable state or federal law relating to fraudulent conveyances or transfers) then the obligations of such Guarantor hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal or state and including without limitation the Bankruptcy Code).

Subject to Section 6B.5, upon the satisfaction of the Company Obligations in full, regardless of the source of payment, the Guarantors' obligations hereunder shall be deemed satisfied, discharged and terminated other than indemnifications set forth herein that expressly survive.

6B.8 Payment of Amounts to Bank.

Each Financing Party hereby instructs each Guarantor, and each Guarantor hereby acknowledges and agrees, that until such time as the Loans and the Holder Advances are paid in full and the Liens evidenced by the Security Agreement and the Mortgage Instruments have been released and all Rent (excluding Excepted Payments which shall be payable to each other Person as appropriate) and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to any Person shall instead be paid directly to Bank (excluding Excepted Payments which shall be payable to each other Person as appropriate) or as Bank may direct from time to time for allocation in accordance with Section 8.7 hereof.

SECTION 7. PAYMENT OF CERTAIN EXPENSES.

7.1 Transaction Expenses.

(a) Assuming no Default or Event of Default shall have occurred and be continuing, the Lessor agrees to pay, or cause to be paid, all Transaction Expenses; provided, however, the Lessor shall pay such amounts described in this Section 7.1(a)

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only if (i) such amounts are properly described in a Requisition delivered in accordance with the Operative Agreements, and (ii) funds are made available by the Bank in connection with such Requisition in an amount sufficient to allow such payment.

(b) [Intentionally Left Blank].

(c) All fees payable pursuant to the Operative Agreements shall be calculated on the basis of a year of three hundred sixty (360) days for the actual days elapsed.

7.2 Brokers Fees.

The Lessor agrees to pay or cause to be paid any and all brokers' fees, if any, including without limitation any interest and penalties thereon, which are payable in connection with the transactions contemplated by this Agreement and the other Operative Agreements; provided, however, the Lessor shall pay such amounts described in this Section 7.2 only if (i) such amounts are properly described in a Requisition delivered in accordance with the Operative Agreements, and (ii) funds are made available by the Bank in connection with

such Requisition in an amount sufficient to allow such payment.

### 7.3 Certain Fees and Expenses.

The Lessor agrees to pay or cause to be paid (a) the initial and annual Owner Trustee's fee and all reasonable expenses of the Owner Trustee and any co-trustees (including without limitation reasonable counsel fees and expenses) or any successor owner trustee and/or co-trustee, for acting as the owner trustee under the Trust Agreement, (b) all reasonable costs and expenses incurred by the Credit Parties, the Bank or the Lessor in entering into any Lease Supplement and any future amendments, modifications, supplements, restatements and/or replacements with respect to any of the Operative Agreements, whether or not such Lease Supplement, amendments, modifications, supplements, restatements and/or replacements are ultimately entered into, or giving or withholding of waivers of consents hereto or thereto, which have been requested by the Lessee, the Bank or the Lessor, (c) all reasonable costs and expenses incurred by any Credit Party, the Bank or the Lessor in connection with any exercise of remedies under any Operative Agreement or any purchase of any Property by the Construction Agent, the Lessee or any third party and (d) all reasonable costs and expenses incurred by the Credit Parties, the Bank or the Lessor in connection with any transfer or conveyance of any Property, whether or not such transfer or conveyance is ultimately accomplished; provided, however, the Lessor shall pay such amounts described in this Section 7.3 only if (i) such amounts are properly described in a Requisition delivered in accordance with the Operative Agreements, and (ii) funds are made available by the Bank in connection with such Requisition in an amount sufficient to allow such payment.

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## SECTION 8. OTHER COVENANTS AND AGREEMENTS.

### 8.1 Cooperation with the Construction Agent or the Lessee.

The Bank and the Lessor (at the direction of the Bank) shall, at the expense of and to the extent reasonably requested by the Construction Agent or the Lessee (but without assuming additional liabilities on account thereof and only to the extent such is acceptable to the Bank and the Lessor (at the direction of the Bank) in its reasonable discretion, cooperate with the Construction Agent or the Lessee in connection with the Construction Agent or the Lessee satisfying its covenant obligations contained in the Operative Agreements including without limitation at any time and from time to time, promptly and duly executing and delivering any and all such further instruments, documents and financing statements (and continuation statements related thereto).

### 8.2 Covenants of the Owner Trustee and the Bank.

Each of the Owner Trustee and the Bank hereby agrees that so long as this Agreement is in effect:

(a) Neither the Owner Trustee (in its trust capacity or in its individual capacity) nor the Bank will create or permit to exist at any time, and each of them will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens on the Properties attributable to it; provided, however, that the Owner Trustee and the Bank shall not be required to so discharge any such Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not materially and adversely affect the rights of the Lessee under the Lease and the other Operative Agreements or involve any material danger of impairment of the Liens of the Security Documents or of the sale, forfeiture or loss of, and shall not interfere with the use or disposition of, any Property or title thereto or any interest therein or the payment of Rent;

(b) Without prejudice to any right under the Trust Agreement of the Owner Trustee to resign (subject to requirement set forth in the Trust Agreement that such resignation shall not be effective until a successor shall have agreed to accept such appointment), or the Bank's rights under the Trust Agreement to remove the institution acting as the Owner Trustee, each of the Owner Trustee and the Bank hereby agrees with the Lessee (i) not to terminate or revoke the trust created by the Trust Agreement except as permitted by Article VIII of the Trust Agreement, (ii) not to amend, supplement, terminate or revoke or otherwise modify any provision of the Trust Agreement in such a manner as to adversely affect the rights of any such party without the prior written consent of such party and (iii) to comply with all of the terms of the Trust Agreement, the nonperformance of which would adversely affect such party;

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(c) The Owner Trustee or any successor may resign or be removed by the Bank as the Owner Trustee, a successor Owner Trustee may be appointed and a corporation may become the Owner Trustee under the Trust Agreement, only in accordance with the provisions of Article IX of the Trust Agreement and, with respect to such appointment, with the consent of the Lessee (so long as there shall be no Lease Event of Default that shall have occurred and be continuing), which consent shall not be unreasonably withheld or delayed;

(d) The Owner Trustee, in its capacity as the Owner Trustee under the Trust Agreement, and not in its individual capacity, shall not contract for, create, incur or assume any Indebtedness, or enter into any business or other activity or enter into any contracts or agreements, other than pursuant to or under the Operative Agreements;

(e) The Bank will not instruct the Owner Trustee to take any action in violation of the terms of any Operative Agreement;

(f) Neither the Bank nor the Owner Trustee shall (i) commence any case, proceeding or other action with respect to the Owner Trustee under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seek appointment of a receiver, trustee, custodian or other similar official with respect to the Owner Trustee or for all or any substantial benefit of the creditors of the Owner Trustee; and neither the Bank nor the Owner Trustee shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in this paragraph;

(g) The Owner Trustee shall give prompt notice to the Lessee and the Bank if the Owner Trustee's principal place of business or chief executive office, or the office where the records concerning the accounts or contract rights relating to any Property are kept, shall cease to be located at 79 South Main Street, Salt Lake City, Utah 84111, or if it shall change its name; and

(h) The Owner Trustee shall take or refrain from taking such actions and grant or refrain from granting such approvals with respect to the Operative Agreements and/or relating to any Property in each case as directed in writing by the Bank.

### 8.3 Credit Party Covenants, Consent and Acknowledgment.

(a) Each Credit Party acknowledges and agrees that the Owner Trustee, pursuant to the terms and conditions of the Security Agreement and the Mortgage Instruments, shall create Liens respecting the various personal property, fixtures and real property described therein in favor of the Bank. Each Credit Party hereby irrevocably consents to the creation, perfection and maintenance of such Liens. Each Credit Party shall, to the extent reasonably requested by any of the other parties hereto, cooperate with the other parties in connection with their covenants herein or in the other Operative

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Agreements and shall from time to time duly execute and deliver any and all such future instruments, documents and financing statements (and continuation statements related thereto) as any other party hereto may reasonably request.

(b) The Lessor hereby instructs each Credit Party, and each Credit Party hereby acknowledges and agrees, that until such time as the Loans and the Holder Advances are paid in full and the Liens evidenced by the Security Agreement and the Mortgage Instruments have been released (i) any and all Rent (excluding Excepted Payments which shall be payable to any other Person as appropriate) and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to any Person shall instead be paid directly to the Bank (excluding Excepted Payments which shall be payable to any other Person as appropriate) or as the Bank may direct from time to time for allocation in accordance with Section 8.7 hereof, (ii) all rights of the Lessor under the Lease shall be exercised by the Bank and (iii) each Credit Party shall cause all notices, certificates, financial statements, communications and other information which are delivered, or are required to be delivered, to the Lessor, to also be delivered at the same time to the Bank.

(c) No Credit Party shall consent to or permit any amendment, supplement or other modification of the terms or provisions of any Operative Agreement except in accordance with Section 12.4 of this

Agreement.

(d) Each Credit Party hereby covenants and agrees that, except for amounts payable as Basic Rent, any and all payment obligations owing from time to time under the Operative Agreements by any Person to the Bank or any other Person shall (without further action) be deemed to be Supplemental Rent obligations payable by the Lessee and the other Credit Parties.

(e) At any time the Lessor or the Bank is entitled under the Operative Agreements to possession of a Property or any component thereof, each of the Construction Agent and the Lessee hereby covenants and agrees, at its own cost and expense, to assemble and make the same available to the Bank (on behalf of the Lessor).

(f) The Lessee hereby covenants and agrees that Advances for items other than Land and Improvements respecting any individual parcel of Property shall at no time constitute in excess of ten percent (10%) of the aggregate Advances respecting such parcel of Property funded at such time under the Operative Agreements.

(g) The Lessee hereby covenants and agrees that it shall give prompt notice to the Bank if the Lessee's principal place of business or chief executive office, or the office where the records concerning the accounts or contract rights relating to any Property are kept, shall cease to be located at 500 Volvo Parkway, Chesapeake, Virginia 23320 or if it shall change its name.

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(h) Each Credit Party shall promptly notify the Bank, or cause the Bank to be promptly notified, upon such Credit Party gaining knowledge of the occurrence of any Default or Event of Default which is continuing at such time. In any event, such notice shall be provided to the Bank within ten (10) days of when such Credit Party gains such knowledge.

(i) Lessee shall take all action that Lessee deems necessary to assure that Lessee's computer based systems are able to operate and effectively process data including dates on and after January 1, 2000.

(j) Lessee shall perform any and all obligations of Lessor under, and cause Lessor to otherwise remain in full compliance with, the terms and provisions of each Ground Lease, if any.

(k) Until all the obligations of the Credit Parties under the Operative Agreements have been finally and indefeasibly paid and satisfied in full, the Commitments and the Holder Commitments terminated and the Term has expired or been earlier terminated, the Lessee will furnish or cause to be furnished to Bank at the address set forth or referenced in Section 12.2 of this Agreement, or such other office as may be designated by Bank from time to time: (i) not later than forty-five (45) days after the end of each fiscal quarter, a certificate duly signed by the chief executive officer, chief operating officer, chief financial officer, treasurer or controller of DTS setting forth the ratio of Consolidated Funded Debt to Consolidated EBITDA for the period of four (4) consecutive fiscal quarters ending with such quarter-end and setting forth the computations employed in calculating the ratio (the "Margin Certificate") and (ii) at each time financial statements are delivered or to be delivered pursuant to Section 8.3(m) hereof or Section 28.1 of the Lease, a compliance certificate duly executed by the president, treasurer, chief financial officer or controller of DTS substantially in the form of Exhibit M attached hereto (the "Officer's Compliance Certificate").

(l) Each Credit Party hereby covenants and agrees to cause each Domestic Subsidiary formed or acquired after the Initial Closing Date to execute a Joinder Agreement and to observe the terms of Sections 5.9(a)-(d) of this Agreement, all within thirty (30) days of the formation or acquisition of such Domestic Subsidiary.

(m) The Lessee hereby covenants and agrees to provide (i) no later than one hundred twenty (120) days after the fiscal year end of DTS, the consolidated, audited and unqualified financial statements of DTS, as prepared in accordance with GAAP by an independent certified public accountant acceptable to the Bank and (ii) no later than 45 days after the end of each fiscal quarter of DTS, quarterly management-prepared consolidated financial statements of DTS, including a balance sheet, a profit and loss statement and a statement of changes in cash flow.

8.4 Allocation of Certain Payments.

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Except for Excepted Payments, the parties hereto acknowledge and agree that all payments due and owing by the Lessee to the Lessor under the Lease or any of the other Operative Agreements shall be made by the Lessee directly to the Bank as more particularly provided in Section 8.3 hereof. The Lessor, the Bank and the Lessee acknowledge the terms of Section 8.7 of this Agreement regarding the allocation of payments and other amounts made or received from time to time under the Operative Agreements and agree, that all such payments and amounts are to be allocated as provided in Section 8.7 of this Agreement.

#### 8.5 Grant of Easements, etc.

The Bank hereby agrees that, so long as no Event of Default shall have occurred and be continuing, the Owner Trustee shall, from time to time at the request of the Lessee (and with the prior consent of the Bank, which consent the Bank will not withhold or delay unreasonably), in connection with the transactions contemplated by the Agency Agreement, the Lease or the other Operative Agreements, (i) grant easements and other rights in the nature of easements with respect to any Property, (ii) release existing easements or other rights in the nature of easements which are for the benefit of any Property, (iii) execute and deliver to any Person any instrument appropriate to confirm or effect such grants or releases, and (iv) execute and deliver to any Person such other documents or materials in connection with the acquisition, development, construction, testing or operation of any Property, including without limitation reciprocal easement agreements, construction contracts, operating agreements, development agreements, plats, replats or subdivision documents; provided, that each of the agreements referred to in this Section 8.5 shall be of the type normally executed by the Lessee in the ordinary course of the Lessee's business and shall be on commercially reasonable terms so as not to diminish the value of any Property in any material respect.

#### 8.6 Appointment by the Bank and the Owner Trustee.

The Bank is appointed to provide notices under the Operative Agreements on behalf of the Owner Trustee (as determined by the Bank, in its reasonable discretion), to receive notices under the Operative Agreements on behalf of the Owner Trustee and (subject to Sections 8.5 and 9.2) to take such other action under the Operative Agreements on behalf of the Owner Trustee as the Bank shall determine in its reasonable discretion from time to time. The Bank hereby accepts such appointments. Further, the Bank shall be entitled to take such action on behalf of the Owner Trustee as is delegated to the Bank under any Operative Agreement (whether express or implied) as may be reasonably incidental thereto. The parties hereto hereby agree to the provisions contained in this Section 8.6.

#### 8.7 Collection and Allocation of Payments and Other Amounts.

(a) Each Credit Party has agreed pursuant to Section 5.8 and otherwise in accordance with the terms of this Agreement to pay to (i) the Bank any and all Rent (excluding Excepted Payments) and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to any Person and (ii) each Person as appropriate the Excepted Payments.

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(b) Payments and other amounts received by the Bank from time to time in accordance with the terms of subparagraph (a) shall be applied and allocated by the Bank first, to the payment of interest on the Loans and thereafter the principal of the Loans which is due and payable on such date; second, to the payment of accrued Holder Yield with respect to the Holder Advances and thereafter the portion of the Holder Advances which is due on such date; and third, if no Default or Event of Default is in effect, any excess shall be paid to such Person or Persons as the Lessee may designate.

(c) Upon the termination of the Commitments and the payment in full of the Loans and all other amounts owing by the Owner Trustee hereunder or under any Credit Document and the payment in full of all amounts owing to the Holder and the Owner Trustee under the Trust Agreement, any moneys remaining with the Bank shall be returned to the Lessee or such other Person or Persons as the Lessee may designate. In the event of an Acceleration it is agreed that, prior to the application and allocation of amounts received by the Bank in the order described in Section 8.7(b) above, any such amounts shall first be applied and allocated to the payment of (i) any and all sums advanced by the Bank in order to preserve the Collateral or to preserve its Lien thereon, (ii) the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Collateral, or of any exercise by the Bank of its rights under the Security Documents, together with reasonable attorneys' fees and expenses and

court costs and (iii) any and all other amounts reasonably owed to the Bank under or in connection with the transactions contemplated by the Operative Agreements (including without limitation any accrued and unpaid administration fees).

#### 8.8 Release of Properties, etc.

If the Lessee shall at any time purchase any Property pursuant to the Lease, or the Construction Agent shall purchase any Property pursuant to the Agency Agreement, or if any Property shall be sold in accordance with Article XXII of the Lease, then, upon satisfaction by the Owner Trustee of its obligation to prepay the Loans, Holder Advances and all other amounts owing to the Bank under the Operative Agreements, the Bank shall release such Properties from the Liens created by the Security Documents to the extent of its interest therein. In addition, upon the termination of the Commitments and the Holder Commitments and the payment in full of the Loans, the Holder Advances and all other amounts owing by the Owner Trustee and the Lessee hereunder or under any other Operative Agreement, the Bank shall release all of the Properties from the Liens created by the Security Documents to the extent of its interest therein. Upon request of the Owner Trustee following any such release, the Bank shall, at the sole cost and expense of the Lessee, execute and deliver to the Owner Trustee and the Lessee such documents as the Owner Trustee or the Lessee shall reasonably request to evidence such release.

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### SECTION 9. CREDIT AGREEMENT AND TRUST AGREEMENT.

#### 9.1 The Construction Agents and the Lessees Credit Agreement Rights.

Notwithstanding anything to the contrary contained in the Credit Agreement, the Bank, the Credit Parties and the Owner Trustee hereby agree that, prior to the occurrence and continuation of any Default or Event of Default, the Construction Agent or the Lessee, as the case may be, shall have the following rights:

(a) the right to designate an account to which amounts funded under the Operative Agreements shall be credited pursuant to Section 2.3(a) of the Credit Agreement;

(b) the right to terminate or reduce the Commitments pursuant to Section 2.5(a) of the Credit Agreement;

(c) the right to exercise the conversion and continuation options pursuant to Section 2.7 of the Credit Agreement;

(d) the right to receive any notice and any certificate, in each case issued pursuant to Section 2.11(a) of the Credit Agreement;

(e) the right to consent to any assignment by the Bank to which the Lessor has the right to consent pursuant to Section 9.8 of the Credit Agreement.

#### 9.2 The Construction Agents and the Lessees Trust Agreement Rights.

Notwithstanding anything to the contrary contained in the Trust Agreement, the Credit Parties, the Owner Trustee and the Bank hereby agree that, prior to the occurrence and continuation of any Default or Event of Default, the Construction Agent or the Lessee, as the case may be, shall have the following rights:

(a) the right to exercise the conversion and continuation options pursuant to Section 3.8 of the Trust Agreement;

(b) the right to receive any notice and any certificate, in each case issued pursuant to Section 3.9(a) of the Trust Agreement;

(c) the right to exercise the removal options contained in Section 9.1 of the Trust Agreement; provided, however, that no removal of the Owner Trustee and appointment of a successor Owner Trustee by the Holder pursuant to Section 9.1 of the Trust Agreement shall be made without the prior written consent (not to be unreasonably withheld or delayed) of the Lessee.

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### SECTION 10. TRANSFER OF INTEREST.

#### 10.1 Restrictions on Transfer.

The Bank may assign or transfer all of its interest hereunder and under the other Operative Agreements in accordance with Section 9.8 of the Credit

Agreement. The Bank may, directly or indirectly, assign, convey or otherwise transfer all of its right, title or interest in or to the Trust Estate or the Trust Agreement with the prior written consent of the Lessee (which consent shall not be unreasonably withheld or delayed) and in accordance with the terms of Section 11.8(b) of the Trust Agreement. The Owner Trustee may, subject to the rights of the Lessee under the Lease and the other Operative Agreements and to the Lien of the applicable Security Documents but only with the prior written consent of the Bank (which consent may be withheld by the Bank in its sole discretion) and (provided, no Default or Event of Default has occurred and is continuing) with the consent of the Lessee, directly or indirectly, assign, convey, appoint an agent with respect to enforcement of, or otherwise transfer any of its right, title or interest in or to any Property, the Lease, the Trust Agreement and the other Operative Agreements (including without limitation any right to indemnification thereunder), or any other document relating to a Property or any interest in a Property as provided in the Trust Agreement and the Lease. The provisions of the immediately preceding sentence shall not apply to the obligations of the Owner Trustee to transfer Property to the Lessee or a third party purchaser pursuant to Article XXII of the Lease upon payment for such Property in accordance with the terms and conditions of the Lease. No Credit Party may assign any of the Operative Agreements or any of their respective rights or obligations thereunder or with respect to any Property in whole or in part to any Person without the prior written consent of the Bank and the Lessor.

#### 10.2 Effect of Transfer.

From and after any transfer effected in accordance with this Section 10, the transferor shall be released, to the extent of such transfer, from its liability hereunder and under the other documents to which it is a party in respect of obligations to be performed on or after the date of such transfer; provided, however, that any transferor shall remain liable hereunder and under such other documents to the extent that the transferee shall not have assumed the obligations of the transferor thereunder. Upon any transfer by the Owner Trustee or the Bank as above provided, any such transferee shall assume the obligations of the Owner Trustee or the Bank, as the case may be. Notwithstanding any transfer of all or a portion of the transferor's interest as provided in this Section 10, the transferor shall be entitled to all benefits accrued and all rights vested prior to such transfer including without limitation rights to indemnification under any such document.

### SECTION 11. INDEMNIFICATION.

#### 11.1 General Indemnity.

Whether or not any of the transactions contemplated hereby shall be consummated, the Indemnity Provider hereby assumes liability for and agrees to defend, indemnify and hold

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harmless each Indemnified Person on an After Tax Basis from and against any Claims, which may be imposed on, incurred by or asserted against an Indemnified Person by any third party, including without limitation Claims arising from the negligence of an Indemnified Person (but not to the extent such Claims arise from the gross negligence or willful misconduct of such Indemnified Person) in any way relating to or arising or alleged to arise out of the execution, delivery, performance or enforcement of this Agreement, the Lease or any other Operative Agreement or on or with respect to any Property or any component thereof, including without limitation Claims in any way relating to or arising or alleged to arise out of (a) the financing, refinancing, purchase, acceptance, rejection, ownership, design, construction, refurbishment, development, delivery, acceptance, nondelivery, leasing, subleasing, possession, use, occupancy, operation, maintenance, repair, modification, transportation, condition, sale, return, repossession (whether by summary proceedings or otherwise), or any other disposition of any Property or any part thereof, including without limitation the acquisition, holding or disposition of any interest in the Property, lease or agreement comprising a portion of any thereof; (b) any latent or other defects in any Property or any portion thereof whether or not discoverable by an Indemnified Person or the Indemnity Provider; (c) a violation of Environmental Laws, Environmental Claims or other loss of or damage to any property or the environment relating to the Property, the Lease, the Agency Agreement or the Indemnity Provider; (d) the Operative Agreements, or any transaction contemplated thereby; (e) any breach by the Indemnity Provider of any of its representations or warranties under the Operative Agreements to which the Indemnity Provider is a party or failure by the Indemnity Provider to perform or observe any covenant or agreement to be performed by it under any of the Operative Agreements; (f) the transactions contemplated hereby or by any other Operative Agreement, in respect of the application of Parts 4 and 5 of Subtitle B of Title I of ERISA; (g) personal injury, death or property damage, including without limitation Claims based on strict or absolute liability in tort; and (h) any fees, expenses and/or other assessments by any business park or any other applicable entity with oversight responsibility for the applicable Property. The Indemnity Provider shall be permitted to contest or respond to any

Claim subject to this Section 11.1 with the prior written consent of the Indemnified Person, which consent shall not be unreasonably withheld or delayed.

11.2 General Tax Indemnity.

(a) The Indemnity Provider shall pay and assume liability for, and does hereby agree to indemnify, protect and defend each Property and all Indemnified Persons, and hold them harmless against, all Impositions on an After Tax Basis, and all payments pursuant to the Operative Agreements shall be made free and clear of and without deduction for any and all present and future Impositions.

(b) Notwithstanding anything to the contrary in Section 11.2(a) hereof, the following shall be excluded from the indemnity required by Section 11.2(a):

(i) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, value added, transfer or property taxes) that are imposed on an Indemnified Person (other than the Lessor, the Owner Trustee and the Trust) by the United States federal government that are based on or measured by the net income

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(including without limitation taxes based on capital gains and minimum taxes) of such Person; provided, that this clause (i) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;

(ii) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, value added, transfer or property taxes) that are imposed on any Indemnified Person (other than the Lessor, the Owner Trustee and the Trust) by any state or local jurisdiction or taxing authority within any state or local jurisdiction and that are based upon or measured by the net income (including without limitation taxes based on capital gains and minimum taxes) of such Person; provided that such Taxes shall not be excluded under this subparagraph (ii) to the extent such Taxes would have been imposed had the location, possession or use of any Property in, the location or the operation of the Lessee in, or the Lessee's making payments under the Operative Agreements from, the jurisdiction imposing such Taxes been the sole connection between such Indemnified Person and the jurisdiction imposing such Taxes; provided, further, that this clause (ii) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;

(iii) any Tax to the extent it relates to any act, event or omission that occurs after the termination of the Lease and redelivery or sale of the Property in accordance with the terms of the Lease (but not any Tax that relates to such termination, redelivery or sale and/or to any period prior to such termination, redelivery or sale); and

(iv) any Taxes which are imposed on an Indemnified Person as a result of the gross negligence or willful misconduct of such Indemnified Person, but not Taxes imposed as a result of ordinary negligence of such Indemnified Person;

(c) Subject to the terms of Section 11.2(f), the Indemnity Provider shall pay or cause to be paid all Impositions directly to the taxing authorities where feasible and otherwise to the Indemnified Person, as appropriate, and the Indemnity Provider shall at its own expense, upon such Indemnified Person's reasonable request, furnish to such Indemnified Person copies of official receipts or other satisfactory proof evidencing such payment.

(d) The Indemnity Provider shall be responsible for preparing and filing any real and personal property or ad valorem tax returns in respect of each Property and any other tax returns required for the Owner Trustee respecting the transactions described in the Operative Agreements. In case any other report or tax return shall be required to be made with respect to any obligations of the Indemnity Provider under or arising out of subsection (a) and of which the Indemnity Provider has knowledge or should have knowledge, the Indemnity Provider, at its sole cost and expense, shall notify the relevant Indemnified Person of such requirement and (except if such Indemnified Person notifies

the Indemnity Provider that such Indemnified Person intends to prepare and file such report or return) (A) to the extent required or permitted by and consistent with Legal Requirements, make and file in the Indemnity Provider's name such return, statement or report; and (B) in the case of any other such return, statement or report required to be made in the name of such Indemnified Person, advise such Indemnified Person of such fact and prepare such return, statement or report for filing by such Indemnified Person or, where such return, statement or report shall be required to reflect items in addition to any obligation of the Indemnity Provider under or arising out of subsection (a), provide such Indemnified Person at the Indemnity Provider's expense with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of the Indemnity Provider under or arising out of subsection (a). Such Indemnified Person shall, upon the Indemnity Provider's request and at the Indemnity Provider's expense, provide any data maintained by such Indemnified Person (and not otherwise available to or within the control of the Indemnity Provider) with respect to each Property which the Indemnity Provider may reasonably require to prepare any required tax returns or reports.

(e) As between the Indemnity Provider on one hand, and the Bank on the other hand, the Indemnity Provider shall be responsible for, and the Indemnity Provider shall indemnify and hold harmless the Bank (without duplication of any indemnification required by subsection (a)) on an After Tax Basis against, any obligation for United States or foreign withholding taxes or similar levies, imposts, charges, fees, deductions or withholdings (collectively, "Withholdings") imposed in respect of the interest payable on the Notes, Holder Yield payable on the Certificates or with respect to any other payments under the Operative Agreement (all such payments being referred to herein as "Exempt Payments" to be made without deduction, withholding or set off) and, if the Bank receives a demand for such payment from any taxing authority or a Withholding is otherwise required with respect to any Exempt Payment, the Indemnity Provider shall discharge such demand on behalf of the Bank.

If the Bank or any of its Affiliates files a consolidated tax return (or equivalent) and subsequently receives the benefit in any country of a tax credit or an allowance resulting from U.S. Taxes with respect to which it has received a payment of an additional amount under this Section 11.2(e), the Bank will pay to the Indemnity Provider such part of that benefit as in the opinion of the Bank will leave it (after such payment) in a position no more and no less favorable than it would have been in if no additional payment had been required to be paid, provided always that (i) the Bank will be the sole judge of the amount of any such benefit and of the date on which it is received, (ii) the Bank will have the absolute discretion as to the order and manner in which it employs or claims tax credits and allowances available to it and (iii) the Bank will not be obliged to disclose to the Borrower any information regarding its tax affairs or tax computations. For the purposes of this Section 11.2(e), "U.S. Taxes" shall mean any present or future tax, assessment or other charge or levy imposed by or on behalf of the United States of America or any taxing authority thereof or therein.

(f) If a written Claim is made against any Indemnified Person or if any proceeding shall be commenced against such Indemnified Person (including without limitation a written notice of such proceeding), for any Impositions, the Indemnity Provider shall be permitted to contest such Claim with the written consent of the Indemnified Person, which consent shall not be unreasonably withheld or delayed; provided, however, that the Indemnity Provider shall have the right to conduct and control such contest only if such contest involves a Tax other than a Tax on net income of the Indemnified Person and can be pursued independently from any other proceeding involving a Tax liability of such Indemnified Person.

### 11.3 Increased Costs, Illegality, etc.

(a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request hereafter adopted, promulgated or made by any central bank or other governmental authority (whether or not having the force of law), there shall be any increase in the cost to the Bank of agreeing to make or making, funding or maintaining Advances, then the Lessee shall from time to time, upon demand by the Bank, pay to the Bank additional amounts sufficient to compensate the Bank for such increased cost. A certificate as to the amount of such increased cost, submitted to the Lessee by the Bank, shall be

conclusive and binding for all purposes, absent manifest error.

(b) If the Bank determines that compliance with any law or regulation or any guideline or request from any central bank or other governmental authority (whether or not having the force of law, but in each case promulgated or made after the date hereof) affects or would affect the amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank and that the amount of such capital is increased by or based upon the existence of the Bank's commitment to make Advances and other commitments of this type or upon the Advances, then, upon demand by the Bank, the Lessee shall pay to the Bank, from time to time as specified by the Bank, additional amounts sufficient to compensate the Bank or such corporation in the light of such circumstances, to the extent that the Bank reasonably determines such increase in capital to be allocable to the existence of the Bank's commitment to make such Advances. A certificate as to such amounts submitted to the Lessee by the Bank shall be conclusive and binding for all purposes, absent manifest error.

(c) Without limiting the effect of the foregoing, the Lessee shall pay to the Bank on the last day of the Interest Period therefor so long as such it is maintaining reserves against "Eurocurrency liabilities" under Regulation D an additional amount (determined by the Bank) equal to the product of the following for each Eurodollar Loan or Eurodollar Holder Advance, as the case may be, for each day during such Interest Period:

(i) the principal amount of such Eurodollar Loan or Eurodollar Holder Advance, as the case may be, outstanding on such day; and

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(ii) the remainder of (x) a fraction the numerator of which is the rate (expressed as a decimal) at which interest accrues on such Eurodollar Loan or Eurodollar Holder Advance, as the case may be, for such Interest Period as provided in the Credit Agreement or the Trust Agreement, as the case may be (less the Applicable Percentage), and the denominator of which is one (1) minus the effective rate (expressed as a decimal) at which such reserve requirements are imposed on such Financing Party on such day minus (y) such numerator; and

(iii) 1/360.

(d) Without affecting its rights under Sections 11.3(a), 11.3(b) or 11.3(c) or any other provision of any Operative Agreement, the Bank agrees that if there is any increase in any cost to or reduction in any amount receivable by the Bank with respect to which the Lessee would be obligated to compensate the Bank pursuant to Sections 11.3(a) or 11.3(b), the Bank shall use reasonable efforts to select an alternative office for Advances which would not result in any such increase in any cost to or reduction in any amount receivable by the Bank; provided, however, that the Bank shall not be obligated to select an alternative office for Advances if the Bank determines that (i) as a result of such selection such the Bank would be in violation of any applicable law, regulation, treaty, or guideline, or would incur additional costs or expenses or (ii) such selection would be inadvisable for regulatory reasons or materially inconsistent with the interests of the Bank.

(e) With reference to the obligations of the Lessee set forth in Sections 11.3(a) through 11.3(d), the Lessee shall not have any obligation to pay to the Bank amounts owing under such Sections for any period which is more than one (1) year prior to the date upon which the request for payment therefor is delivered to the Lessee.

(f) Notwithstanding any other provision of this Agreement, if the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for the Bank to perform its obligations hereunder to make or maintain Eurodollar Loans or Eurodollar Holder Advances, as the case may be, then (i) each Eurodollar Loan or Eurodollar Holder Advance, as the case may be, will automatically, at the earlier of the end of the Interest Period for such Eurodollar Loan or Eurodollar Holder Advance, as the case may be, or the date required by law, convert into an ABR Loan or an ABR Holder Advance, as the case may be, and (iii) the obligation of the Bank to make, convert or continue Eurodollar Loans or Eurodollar Holder Advances, as the case may be, shall be suspended until the Agent shall notify the Lessee that the Bank has determined that the circumstances causing such suspension no longer exist.

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#### 11.4 Funding/Contribution Indemnity.

Subject to the provisions of Section 2.11(a) of the Credit Agreement and 3.9(a) of the Trust Agreement, as the case may be, the Lessee agrees to indemnify the Bank and to hold the Bank harmless from any loss or reasonable expense which such Financing Party may sustain or incur as a consequence of (a) any default in connection with the drawing of funds for any Advance, (b) any default in making any prepayment after a notice thereof has been given in accordance with the provisions of the Operative Agreements or (c) the making of a voluntary or involuntary payment of Eurodollar Loans or Eurodollar Holder Advances, as the case may be, on a day which is not the last day of an Interest Period with respect thereto. Such indemnification shall be in an amount equal to the excess, if any, of (x) the amount of interest or Holder Yield, as the case may be, which would have accrued on the amount so paid, or not so borrowed, accepted, converted or continued for the period from the date of such payment or of such failure to borrow, accept, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, accept, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable Eurodollar Rate plus the Applicable Percentage for such Loan or Holder Advance, as the case may be, for such Interest Period over (y) the amount of interest (as determined by the Bank in its reasonable discretion) which would have accrued to the Bank on such amount by (i) (in the case of Loans) reemploying such funds in loans of the same type and amount during the period from the date of payment or failure to borrow to the last day of the then applicable Interest Period (or, in the case of a failure to borrow, the Interest Period that would have commenced on the date of such failure) and (ii) (in the case of Holder Advances) placing such amount on deposit for a comparable period with leading banks in the relevant interest rate market. This covenant shall survive the termination of the Operative Agreements and the payment of all other amounts payable hereunder.

#### 11.5 Additional Provisions Regarding Indemnification.

Notwithstanding the provisions of Sections 11.1, 11.2 and 11.4, the Owner Trustee shall be the only beneficiary of the provisions set forth in Sections 11.1, 11.2 and 11.4 with respect to each Property solely for the period prior to the earlier to occur of the applicable Completion Date or Construction Period Termination Date for such Property, as applicable. After the earlier to occur of the applicable Completion Date or Construction Period Termination Date for such Property, as applicable, each Indemnified Person shall be a beneficiary of the provisions set forth in Sections 11.1, 11.2 and 11.4.

To the extent the Indemnity Provider is not obligated to indemnify each Indemnified Person with respect to the various matters described in this Section 11.5, the Owner Trustee shall provide such indemnities in favor of each Indemnified Person in accordance with the provisions of this Section 11.5. Whether or not any of the transactions contemplated hereby shall be consummated, the Owner Trustee hereby assumes liability for and agrees to defend, indemnify and hold harmless each Indemnified Person on an After Tax Basis from and against any Claims, which may be imposed on, incurred by or asserted against an Indemnified Person by any third party, including without limitation Claims arising from the negligence of an Indemnified Person in any way relating to or arising or alleged to arise out of the execution, delivery, performance or

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enforcement of this Agreement, the Lease or any other Operative Agreement or on or with respect to any Property or any component thereof.

The Owner Trustee shall pay and assume liability for, and does hereby agree to indemnify, protect and defend each Property and all Indemnified Persons, and hold them harmless against, all Impositions on an After Tax Basis, and all payments pursuant to the Operative Agreements shall be made free and clear of and without deduction for any and all present and future Impositions. Notwithstanding anything to the contrary in this paragraph, the Excluded Taxes shall be excluded from the indemnity provisions afforded by this paragraph.

THE INDEMNITY OBLIGATIONS UNDERTAKEN BY THE OWNER TRUSTEE PURSUANT TO THIS SECTION 11.5 ARE IN ALL RESPECTS SUBJECT TO THE LIMITATIONS ON LIABILITY REFERENCED IN SECTION 12.9.

### SECTION 12. MISCELLANEOUS.

#### 12.1 Survival of Agreements.

The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Agreements, and the parties' obligations under any and all thereof, shall survive the execution and delivery of this Agreement, the transfer of any Property to the Owner Trustee, the

acquisition of any Property (or any of its components), the construction of any Improvements, the Completion of any Property, any disposition of any interest of the Owner Trustee in any Property or any interest of the Bank in the Trust Estate, the payment of the Notes and any disposition thereof and shall be and continue in effect notwithstanding any investigation made by any party and the fact that any party may waive compliance with any of the other terms, provisions or conditions of any of the Operative Agreements. Except as otherwise expressly set forth herein or in other Operative Agreements, the indemnities of the parties provided for in the Operative Agreements shall survive the expiration or termination of any thereof.

## 12.2 Notices.

All notices required or permitted to be given under any Operative Agreement shall be in writing. Notices may be served by certified or registered mail, postage paid with return receipt requested; by private courier, prepaid; by telex, facsimile, or other telecommunication device capable of transmitting or creating a written record; or personally. Mailed notices shall be deemed delivered five (5) days after mailing, properly addressed. Couriered notices shall be deemed delivered when delivered as addressed, or if the addressee refuses delivery, when presented for delivery notwithstanding such refusal. Telex or telecommunicated notices shall be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the parties at the following addresses:

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If to the Construction Agent or the Lessee, to such entity at the following address:

Dollar Tree Distribution, Inc.  
500 Volvo Parkway  
Chesapeake, VA 23320  
Attention: Frederick C. Coble  
Telephone: (757) 321-5000  
Telecopy: (757) 321-5111

If to any Guarantor, to such entity in care of Frederick C. Coble at the following address:

Dollar Tree Stores, Inc.  
500 Volvo Parkway  
Chesapeake, VA 23320  
Attention: Frederick C. Coble  
Telephone: (757) 321-5000  
Telecopy: (757) 321-5111

If to the Owner Trustee, to it at the following address:

First Security Bank, National Association  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Val T. Orton,  
Vice President  
Telephone: (801) 246-5300  
Telecopy: (801) 246-5053

If to the Bank, to it at the following address:

First Union National Bank  
c/o First Union Capital Markets Group  
DC 6  
301 South College Street  
Charlotte, North Carolina 28288-0166  
Attention: Christy Lee Foster,  
Capital Markets Services  
Telephone: (704) 383-5398  
Telecopy: (704) 383-7989

From time to time any party may designate additional parties and/or another address for notice purposes by notice to each of the other parties hereto. Each notice hereunder shall be effective upon receipt or refusal thereof.

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## 12.3 Counterparts.

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original,

but all such counterparts shall together constitute but one (1) and the same instrument.

#### 12.4 Terminations, Amendments, Waivers, Etc.; Unanimous Vote Matters.

Each Basic Document may be terminated, amended, supplemented, waived or modified only by an instrument in writing signed by, subject to Article VIII of the Trust Agreement regarding termination of the Trust Agreement, the Bank, the Owner Trustee and each Credit Party (to the extent such Credit Party is a party to such Basic Document); provided, to the extent no Default or Event of Default shall have occurred and be continuing, the Bank shall not amend, supplement, waive or modify any provision of any Basic Document in such a manner as to adversely affect the rights of any Credit Party without the prior written consent (not to be unreasonably withheld or delayed) of such Credit Party. Each Operative Agreement which is not a Basic Document may be terminated, amended, supplemented, waived or modified only by an instrument in writing signed by the parties thereto and the Bank.

#### 12.5 Headings, etc.

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

#### 12.6 Parties in Interest.

Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any Person except the parties hereto.

#### 12.7 GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL; VENUE; ARBITRATION.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA. Any legal action or proceeding with respect to this Agreement or any other Operative Agreement may be brought in the courts of the State of NORTH CAROLINA located in MECKLENBURG County or of the United States for the WESTERN District of NORTH CAROLINA, and, by execution and delivery of this Agreement, each of the parties to this Agreement hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of such courts. The parties shall serve process in accordance with applicable laws. Nothing herein shall affect the right of any party to commence legal proceedings or to otherwise proceed against any party in any other jurisdiction.

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(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO ANY DISPUTE OR THIS AGREEMENT, ANY OTHER OPERATIVE AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

(c) Each of the parties to this Agreement hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other Operative Agreement brought in the courts referred to in subsection (a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

(d) Notwithstanding the provisions of Section 12.7(a) or of any other Operative Agreement to the contrary, upon demand of any party to this Agreement and/or any other Operative Agreement, upon demand of any party hereto, whether made before or after institution of any judicial proceeding, any claim or controversy arising out of, or relating to the Operative Agreements between or among the parties hereto (a "Dispute") shall be resolved by binding arbitration conducted under and governed by the Commercial Financial Disputes Arbitration Rules (the "Arbitration Rules") of the American Arbitration Association (the "AAA") and the Federal Arbitration Act; provided, that any demand for arbitration pursuant to this Section 12.7 shall be made no later than 30 days after service of process in any legal action or proceeding brought pursuant to Section 12.7(a). Disputes may include without limitation tort claims, counterclaims, disputes as to whether a matter is subject to arbitration, claims brought as class actions, or claims arising from documents executed in the future. A judgment upon the award may be entered in any court having jurisdiction. Notwithstanding the foregoing, this arbitration provision does not apply to disputes under or related to swap agreements.

All arbitration hearings shall be conducted in the city in which the office of the Bank (referenced pursuant to Section 12.2 of this Agreement) is

located. A hearing shall begin within ninety (90) days of demand for arbitration and all hearings shall be concluded within one hundred and twenty (120) days of demand for arbitration. These time limitations may not be extended unless a party shows cause for extension and then for no more than a total of sixty (60) days. The expedited procedures set forth in Rule 51 et seq. of the Arbitration Rules shall be applicable to claims of less than \$1,000,000. Arbitrators shall be licensed attorneys selected from the Commercial Financial Dispute Arbitration Panel of the AAA. The parties do not waive applicable federal or state substantive law except as provided herein.

Notwithstanding the preceding binding arbitration provisions, the parties agree to preserve, without diminution, certain remedies that any party may exercise before or after an arbitration proceeding is brought. The parties shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) all rights to foreclose against any real or personal property or other security by exercising a power of sale or under applicable law by judicial foreclosure including a proceeding to confirm

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the sale; (ii) all rights of self-help including peaceful occupation of real property and collection of rents, set-off and peaceful possession of personal property; (iii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceedings; and (iv) when applicable, a judgment by confession of judgment. Any claim or controversy with regard to any party's entitlement to such remedies is a Dispute.

Each party to this Agreement agrees that it shall not have a remedy of punitive or exemplary damages against any other party in any Dispute and hereby waives any right or claim to punitive or exemplary damages they have now or which may arise in the future in connection with any Dispute, whether the Dispute is resolved by arbitration or judicially.

#### 12.8 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### 12.9 Liability Limited.

(a) The Bank, the Credit Parties and the Owner Trustee each acknowledge and agree that the Owner Trustee is (except as otherwise expressly provided herein or therein) entering into this Agreement and the other Operative Agreements to which it is a party (other than the Trust Agreement and to the extent otherwise provided in Section 6.1 of this Agreement), solely in its capacity as trustee under the Trust Agreement and not in its individual capacity and that the Trust Company shall not be liable or accountable under any circumstances whatsoever in its individual capacity for or on account of any statements, representations, warranties, covenants or obligations stated to be those of the Owner Trustee, except for its own gross negligence or willful misconduct and as otherwise expressly provided herein or in the other Operative Agreements.

(b) Anything to the contrary contained in this Agreement, the Credit Agreement, the Notes or in any other Operative Agreement notwithstanding, no Exculpated Person shall be personally liable in any respect for any liability or obligation arising hereunder or in any other Operative Agreement including without limitation the payment of the principal of, or interest on, the Notes, or for monetary damages for the breach of performance of any of the covenants contained in the Credit Agreement, the Notes, this Agreement, the Security Agreement or any of the other Operative Agreements. The Bank agrees that, in the event any remedies under any Operative Agreement are pursued, the Bank shall have no recourse against any Exculpated Person, for any deficiency, loss or Claim for monetary damages or otherwise resulting therefrom and recourse shall be had solely and exclusively against the Trust Estate (excluding

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Excepted Payments) and the Credit Parties (with respect to the Credit Parties' obligations under the Operative Agreements); but nothing contained herein shall be taken to prevent recourse against or the enforcement of remedies against the Trust Estate (excluding Excepted

Payments) in respect of any and all liabilities, obligations and undertakings contained herein and/or in any other Operative Agreement. Notwithstanding the provisions of this Section, nothing in any Operative Agreement shall: (i) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Notes and/or the Certificates arising under any Operative Agreement or secured by any Operative Agreement, but the same shall continue until paid or discharged; (ii) relieve any Exculpated Person from liability and responsibility for (but only to the extent of the damages arising by reason of): active waste knowingly committed by any Exculpated Person with respect to any Property, any fraud, gross negligence or willful misconduct on the part of any Exculpated Person; (iii) relieve any Exculpated Person from liability and responsibility for (but only to the extent of the moneys misappropriated, misapplied or not turned over) (A) except for Excepted Payments, misappropriation or misapplication by the Lessor (i.e., application in a manner contrary to any of the Operative Agreements) of any insurance proceeds or condemnation award paid or delivered to the Lessor by any Person other than the Bank, (B) except for Excepted Payments, any deposits or any escrows or amounts owed by the Construction Agent under the Agency Agreement held by the Lessor or (C) except for Excepted Payments, any rent or other income received by the Lessor from any Credit Party that is not turned over to the Bank; or (iv) affect or in any way limit the Bank's rights and remedies under any Operative Agreement with respect to the Rents and rights and powers of the Bank under the Operative Agreements or to obtain a judgment against the Lessee's interest in the Properties or the Bank's rights and powers to obtain a judgment against the Lessor or any Credit Party (provided, that no deficiency judgment or other money judgment shall be enforced against any Exculpated Person except to the extent of the Lessor's interest in the Trust Estate (excluding Excepted Payments) or to the extent the Lessor may be liable as otherwise contemplated in clauses (ii) and (iii) of this Section 12.9(b)).

#### 12.10 Rights of the Credit Parties.

If at any time all obligations (i) of the Owner Trustee under the Credit Agreement, the Security Documents and the other Operative Agreements and (ii) of the Credit Parties under the Operative Agreements have in each case been satisfied or discharged in full, then the Credit Parties shall be entitled to (a) terminate the Lease and guaranty obligations under Section 6B and (b) receive all amounts then held under the Operative Agreements and all proceeds with respect to any of the Properties. Upon the termination of the Lease and Section 6B pursuant to the foregoing clause (a), the Lessor shall transfer to the Lessee all of its right, title and interest free and clear of the Lien of the Lease, the Lien of the Security Documents and all Lessor Liens in and to any Properties then subject to the Lease and any amounts or proceeds referred to in the foregoing clause (b) shall be paid over to the Lessee.

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#### 12.11 Further Assurances.

The parties hereto shall promptly cause to be taken, executed, acknowledged or delivered, at the sole expense of the Lessee, all such further acts, conveyances, documents and assurances as the other parties may from time to time reasonably request in order to carry out and effectuate the intent and purposes of this Participation Agreement, the other Operative Agreements and the transactions contemplated hereby and thereby (including without limitation the preparation, execution and filing of any and all Uniform Commercial Code financing statements, filings of Mortgage Instruments and other filings or registrations which the parties hereto may from time to time request to be filed or effected). The Lessee, at its own expense and without need of any prior request from any other party, shall take such action as may be necessary (including without limitation any action specified in the preceding sentence), or (if the Owner Trustee shall so request) as so requested, in order to maintain and protect all security interests provided for hereunder or under any other Operative Agreement. In addition, in connection with the sale or other disposition of any Property or any portion thereof, the Lessee agrees to execute such instruments of conveyance as reasonably required in connection therewith.

#### 12.12 Calculations under Operative Agreements.

The parties hereto agree that all calculations and numerical determinations to be made under the Operative Agreements by the Owner Trustee shall be made by the Bank and that such calculations and determinations shall be conclusive and binding on the parties hereto in the absence of manifest error.

#### 12.13 [Intentionally Left Blank].

#### 12.14 Financial Reporting/Tax Characterization.

Lessee agrees to obtain advice from its own accountants and tax counsel regarding the financial reporting treatment and the tax characterization of the

transactions described in the Operative Agreements. Lessee further agrees that Lessee shall not rely upon any statement of any Financing Party or any of their respective Affiliates and/or Subsidiaries regarding any such financial reporting treatment and/or tax characterization.

[signature pages follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

CONSTRUCTION AGENT  
AND LESSEE:

DOLLAR TREE DISTRIBUTION, INC.,  
a Virginia corporation, as the Construction  
Agent and the Lessee

By: /s/ Frederick C. Coble  
Name: Frederick C. Coble  
Title: Sr. V.P.

GUARANTORS:

DOLLAR TREE STORES, INC.,  
a Virginia corporation

By: /s/ Frederick C. Coble  
Name: Frederick C. Coble  
Title: Sr. V.P.

DOLLAR TREE MANAGEMENT, INC.,  
a Virginia corporation

By: /s/ Frederick C. Coble  
Name: Frederick C. Coble  
Title: Sr. V.P.

[Signatures continued on next page]

OWNER TRUSTEE AND  
LESSOR:

FIRST SECURITY BANK,  
NATIONAL ASSOCIATION, not  
individually, except as  
expressly stated herein,  
but solely as the Owner  
Trustee under the DTSD  
Realty Trust 1991-1

By: /s/ Val T. Orton  
Name: Val T. Orton  
Title: Vice President

[Signatures continued on next page]

BANK:

FIRST UNION NATIONAL BANK, a national  
banking association, as Lender and Holder

By: /s/ Eileen McCrickard  
Name: Eileen McCrickard  
Title: Vice President

[Signatures end]

EXHIBIT A

REQUISITION FORM

(Pursuant to Sections 4.2, 5.2, 5.3 and 5.4 of the Participation Agreement)

DOLLAR TREE DISTRIBUTION, INC., a Virginia corporation (the "Company") hereby certifies as true and correct and delivers the following Requisition to FIRST UNION NATIONAL BANK, as lender and holder ("Bank"):

Reference is made herein to that certain Participation Agreement dated as of June 2, 1999 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among the Company, in its capacity as the Lessee and as the Construction Agent, the various parties thereto from time to time, as the guarantors (the "Guarantors"), First Security Bank, National Association, as the Owner Trustee and the Bank. Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth therefor in the Participation Agreement.

Check one:

\_\_\_\_ INITIAL CLOSING DATE: \_\_\_\_\_  
(three (3) Business Days prior notice required for Advance)

\_\_\_\_ PROPERTY CLOSING DATE: \_\_\_\_\_  
(three (3) Business Days prior notice required for Advance)

\_\_\_\_ CONSTRUCTION ADVANCE DATE: \_\_\_\_\_  
(three (3) Business Days prior notice required for Advance)

1. Transaction Expenses and other fees, expenses and disbursements under Section 7 of the Participation Agreement and any and all other amounts contemplated to be financed under the participation Agreement including without limitation any Work, broker's fees, taxes, recording fees and the like (with supporting invoices or closing statement attached):

Party to Whom Amount Owed  
Amount is Owed (in U.S. Dollars)

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2. Description of Land (which shall be a legal description of the Land in connection with an Advance to pay Property Acquisition Costs): See attached Schedule 1

3. Description of Improvements: See attached Schedule 2

4. Description of Equipment: See attached Schedule 3

5. Description of Work: See attached Schedule 4

6. Aggregate Loans and Holder Advances requested since the Initial Closing Date with respect to each Property for which Advances are requested under this Requisition (listed on a Property by Property basis), including without limitation all amounts requested under this Requisition: [identify on a Property by Property basis]

\$ \_\_\_\_\_ [Property]

In connection with this Requisition, the Company hereby requests that the Bank make Loans to the Lessor in the amount of \$ \_\_\_\_\_ and that the Bank make Holder Advances to the Lessor in the amount of \$ \_\_\_\_\_. The Company hereby certifies (i) that the foregoing amounts requested do not exceed the total aggregate of the Available Commitments plus the Available Holder Commitments and (ii) each of the provisions of the Participation Agreement applicable to the Loans and Holder Advances requested hereunder have been complied with as of the date of this Requisition.

The Company requests the Loans be allocated as follows:

\$ \_\_\_\_\_ ABR Loans

\$ \_\_\_\_\_ Eurodollar Loans

The Company requests the Holder Advances be allocated as follows:

\$ \_\_\_\_\_ ABR Holder Advances

\$ \_\_\_\_\_ Eurodollar Holder Advances

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The Company has caused this Requisition to be executed by its duly authorized officer as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

DOLLAR TREE DISTRIBUTION, INC.

By:  
Name:  
Title:

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Schedule 1

Description of Land  
(Legal Description and Street Address)

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Schedule 2

Description of Improvements

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Schedule 3

Description of Equipment  
General Description

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Schedule 4

Work  
Work Performed for which the Advance is requested:

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EXHIBIT B

[Outside Counsel Opinion for the Lessee]  
(Pursuant to Section 5.3(j) of the  
Participation Agreement)

TO THOSE ON THE ATTACHED DISTRIBUTION LIST

Re: Synthetic Lease Financing Provided in favor of Dollar Tree  
Distribution, Inc.

Dear Sirs:

We have acted as special counsel to Dollar Tree Distribution, Inc., a Virginia corporation (the "Lessee") and the various parties thereto from time to time, as



guarantors (individually, a "Guarantor" and collectively, the "Guarantors"; individually, Lessee and each Guarantor may be referred to herein as a "Credit Party" or collectively, as the "Credit Parties"), in connection with certain transactions contemplated by the Participation Agreement dated as of June 2, 1999 (the "Participation Agreement"), among the Lessee, First Security Bank, National Association, as the Owner Trustee (the "Owner Trustee"), and First Union National Bank, as lender and holder ("First Union" or "Bank"). This opinion is delivered pursuant to Section 5.3(j) of the Participation Agreement. All capitalized terms used herein, and not otherwise defined herein, shall have the meanings assigned thereto in Appendix A to the Participation Agreement.

In connection with the foregoing, we have examined originals, or copies certified to our satisfaction, of [identify the applicable Operative Agreements, including each Mortgage Instrument, related UCC fixture filings, Additional UCCs (hereinafter defined), Deeds and Memoranda of Lease] and such other corporate documents and records of the Credit Parties, certificates of public officials and representatives of the Credit Parties as to certain factual matters, and such other instruments and documents which we have deemed necessary or advisable to examine for the purpose of this opinion. With respect to such examination, we have assumed (i) the statements of fact made in all such certificates, documents and instruments are true, accurate and complete; (ii) the due authorization, execution and delivery of the Operative Agreements by the parties thereto; (iii) the genuineness of all signatures, the authenticity and completeness of all documents, certificates, instruments, records and corporate records submitted to us as originals and the conformity to the original instruments of all documents submitted to us as copies, and the authenticity and completeness of the originals of such copies; (iv) that all parties have all requisite corporate power and authority to execute, deliver and perform the Operative Agreements; and (v) except as to the Credit Parties, the enforceability of the Mortgage Instrument, the Memorandum of Lease and the UCC financing statements against all parties thereto.

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Based on the foregoing, and having due regard for such legal considerations as we deem relevant, and subject to the limitations and assumptions set forth herein, including without limitation the matters set forth in the last two (2) paragraphs hereof, we are of the opinion that:

(a) The Mortgage Instrument and Memorandum of Lease are enforceable in accordance with their respective terms, except as limited by laws generally affecting the enforcement of creditors' rights, which laws will not materially prevent the realization of the benefits intended by such documents.

(b) Each form of Mortgage Instrument and UCC fixture filing relating thereto, attached hereto as Schedules 1 and 2, respectively, is in proper form for filing and recording with the offices of [identify the recording offices of the respective county clerks where the Properties are to be located]. Upon filing of each Mortgage Instrument and UCC fixture filing in [identify the recording offices of the respective county clerks where the Properties are to be located], Bank will have a valid, perfected lien and security interest in that portion of the Collateral described in such Mortgage Instrument or UCC fixture filing to the extent such Collateral is comprised of real property and/or fixtures.

(c) The forms of UCC financing statements relating to the Security Documents, attached hereto as Schedule 3 (the "Additional UCCs"), are in proper form for filing and recording with the offices of [identify (i) the recording offices of the respective county clerks where the Properties are to be located and (ii) the Secretary of State where the Properties are to be located]. Upon filing of the Additional UCCs in [identify (i) the recording offices of the respective county clerks where the Properties are to be located and (ii) the Secretary of State where the Properties are to be located], Bank will have a valid, perfected lien and security interest in that portion of the Collateral which can be perfected by filing UCC-1 financing statements under Article 9 of the UCC.

(d) Each form of Deed and Memorandum of Lease is in appropriate form for filing and recording with the [identify the recording offices of the respective county clerks for the counties where the Properties are to be located].

(e) Each Memorandum of Lease, when filed and recorded with the [identify the recording offices of the respective county clerks for the counties where the Properties are to be located], will have been filed and recorded in all public offices in the State of [\_\_\_\_\_] in which filing or recording is necessary to provide constructive notice of the Lease to third Persons and to establish of record the interest of the Lessor thereunder as to the Properties described in each such Memorandum of Lease.

(f) Title to the Properties located in the State of [\_\_\_\_\_] may be held in the name of the Owner Trustee as follows: First Security Bank, National Association, not individually, but solely as the Owner Trustee under

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(g) The execution and delivery by First Security Bank, National Association, individually or as the Owner Trustee, as the case may be, of the Operative Agreements to which it is a party and compliance by First Security Bank, National Association, individually or as the Owner Trustee, with all of the provisions thereof do not and will not contravene any law, rule or regulation of [identify the state].

(h) By reason of their participation in the transaction contemplated under the Operative Agreements, neither Bank nor the Owner Trustee has to (a) qualify as a foreign corporation in [identify the state], (b) file any application or any designation for service of process in [identify the state] or (c) pay any franchise, income, sales, excise, stamp or other taxes of any kind to [identify the state].

(i) The provisions in the Operative Agreements concerning Rent, interest, fees, prepayment premiums and other similar charges do not violate the usury laws or other similar laws regulating the use or forbearance of money of [identify the state].

(j) If the transactions contemplated by the Operative Agreements are characterized as a lease transaction by a court of competent jurisdiction, the Lease and the applicable Lease Supplement shall demise to the Lessee a valid leasehold interest in the Properties described in such Lease Supplement.

(k) If the transactions contemplated by the Operative Agreements are characterized as a loan transaction by a court of competent jurisdiction, the combination of the Mortgage Instruments, the Deeds, the Lease and the applicable Lease Supplements (and the other Operative Agreements incorporated therein by reference) are sufficient to create a valid, perfected lien or security interest in the Properties therein described, enforceable as a mortgage in [identify the state].

This opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters stated herein. This opinion is based on and is limited to the laws of the State of [\_\_\_\_\_] and the federal laws of the United States of America. Insofar as the foregoing opinion relates to matters of law other than the foregoing, no opinion is hereby given.

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This opinion is for the sole benefit of the Lessee, the Construction Agent, the Guarantors, the Owner Trustee, Bank and their respective successors and assigns and may not be relied upon by any other person other than such parties and their respective successors and assigns without the express written consent of the undersigned. The opinions expressed herein are as of the date hereof and we make no undertaking to amend or supplement such opinions if facts come to our attention or changes in the current law of the jurisdictions mentioned herein occur which could affect such opinions.

Very truly yours,

[LESSEE'S OUTSIDE COUNSEL]

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Distribution List

First Union National Bank, as Lender and Holder

Dollar Tree Distribution, Inc., as the Construction Agent and the Lessee

The various parties to the Participation Agreement from time to time, as the Guarantors

First Security Bank, National Association, not individually, but solely as the Owner Trustee under the DTSD Real Estate Trust 1999-1

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Form of Mortgage Instrument

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Schedule 2

Forms of UCC Fixture Filings

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Schedule 3

Forms of UCC Financing Statements

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EXHIBIT C

DOLLAR TREE DISTRIBUTION, INC.

OFFICER'S CERTIFICATE

(Pursuant to Section 5.3(w) of the Participation Agreement)

DOLLAR TREE DISTRIBUTION, INC., a Virginia corporation (the "Company"), DOES HEREBY CERTIFY as follows:

1. Each and every representation and warranty of each Credit Party contained in the Operative Agreements to which it is a party is true and correct in every material respect on and as of the date hereof.
2. No Default or Event of Default has occurred and is continuing under any Operative Agreement.
3. Each Operative Agreement to which any Credit Party is a party is in full force and effect with respect to it.
4. Each Credit Party has duly performed and complied with all covenants, agreements and conditions contained in the Participation Agreement (hereinafter defined) or in any Operative Agreement required to be performed or complied with by it on or prior to the date hereof.

Capitalized terms used in this Officer's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in the Participation Agreement dated as of June 2, 1999 among the Company, as the Lessee and as the Construction Agent, the various parties thereto from time to time, as guarantors (the "Guarantors"), First Security Bank, National Association, as the Owner Trustee and First Union National Bank, as lender and holder ("Bank").

IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

DOLLAR TREE DISTRIBUTION, INC.

By:  
Name:  
Title:

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EXHIBIT D

[NAME OF CREDIT PARTY]

SECRETARY'S CERTIFICATE

(Pursuant to Section 5.3(x) of the Participation Agreement)

[NAME OF CREDIT PARTY], a \_\_\_\_\_ corporation (the "Company")

DOES HEREBY CERTIFY as follows:

1. Attached hereto as Schedule 1 is a true, correct and complete copy of the resolutions of the Board of Directors of the Company duly adopted by the Board of Directors of the Company on \_\_\_\_\_. Such resolutions have not been amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.
2. Attached hereto as Schedule 2 is a true, correct and complete copy of the Articles of Incorporation of the Company on file in the Office of the Secretary of State of \_\_\_\_\_. Such Articles of Incorporation have not been amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.
3. Attached hereto as Schedule 3 is a true, correct and complete copy of the Bylaws of the Company. Such Bylaws have not been amended, modified or rescinded since their date of adoption and remain in full force and effect as of the date hereof.
4. The persons named below now hold the offices set forth opposite their names, and the signatures opposite their names and titles are their true and correct signatures.

Name	Office	Signature
-----	-----	-----
-----	-----	-----

IN WITNESS WHEREOF, the Company has caused this Secretary's Certificate to be duly executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[NAME OF CREDIT PARTY]

By:  
Name:  
Title:

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Schedule 1

Board Resolutions

D-2

Schedule 2

Articles of Incorporation

D-3

Schedule 3

Bylaws

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EXHIBIT E

FIRST SECURITY BANK, NATIONAL ASSOCIATION

OFFICER'S CERTIFICATE

(Pursuant to Section 5.3(z) of the Participation Agreement)

FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, not individually (except with respect to paragraph 1 below, to the extent any such representations and warranties are made in its individual capacity) but solely as the owner trustee under the DTSD Realty Trust 1999-1 (the "Owner Trustee"), DOES HEREBY CERTIFY as follows:

1. Each and every representation and warranty of the Owner Trustee contained in the Operative Agreements to which it is a party is true and correct on and as of the date hereof.

2. Each Operative Agreement to which the Owner Trustee is a party is in full force and effect with respect to it.
3. The Owner Trustee has duly performed and complied with all covenants, agreements and conditions contained in the Participation Agreement (hereinafter defined) or in any Operative Agreement required to be performed or complied with by it on or prior to the date hereof.

Capitalized terms used in this Officer's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in the Participation Agreement dated as of June 2, 1999 among Dollar Tree Distribution, Inc., as the Lessee and as the Construction Agent, the various parties thereto from time to time, as guarantors (the "Guarantors"), the Owner Trustee, and First Union National Bank, as lender and holder ("Bank").

IN WITNESS WHEREOF, the Owner Trustee has caused this Officer's Certificate to be duly executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

FIRST SECURITY BANK,  
NATIONAL ASSOCIATION, not  
individually, except as  
expressly stated herein,  
but solely as the Owner  
Trustee under the DTSD  
Realty Trust 1999-1

By:  
Name:  
Title:

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EXHIBIT F

FIRST SECURITY BANK, NATIONAL ASSOCIATION

SECRETARY'S CERTIFICATE

(Pursuant to Section 5.3(aa) of the Participation Agreement)

CERTIFICATE OF ASSISTANT SECRETARY

I, \_\_\_\_\_, duly elected and qualified Assistant Secretary of the Board of Directors of First Security Bank, National Association (the "Association"), hereby certify as follows:

1. The Association is a National Banking Association duly organized, validly existing and in good standing under the laws of the United States. With respect thereto the following is noted:

- A. Pursuant to Revised Statutes 324, et seq., as amended, 12 U.S.C. 1, et seq., the Comptroller of the Currency charters and exercises regulatory and supervisory authority over all National Banking Associations;
- B. On December 9, 1881, the First National Bank of Ogden, Utah was chartered as a National Banking Association under the laws of the United States and under Charter No. 2597;
- C. On October 2, 1922, in connection with a consolidation of The First National Bank of Ogden, Ogden, Utah, and The Utah National Bank of Ogden, Ogden, Utah, the title was changed to "The First & Utah National Bank of Ogden"; on January 18, 1923, The First & Utah National Bank of Ogden changed its title to "First Utah National Bank of Ogden"; on January 19, 1926, the title was changed to "First National Bank of Ogden"; on February 24, 1934, the title was changed to "First Security Bank of Utah, National Association"; on June 21, 1996, the title was changed to "First Security Bank, National Association"; and
- D. First Security Bank, National Association, Ogden, Utah, continues to hold a valid certificate to do business as a National Banking Association.

2. The Association's Articles of Association, as amended, are in full force and effect, and a true, correct and complete copy is attached hereto as Schedule A and incorporated herein by reference. Said Articles were last amended October 20, 1975, as required by law on notice at a duly called special meeting of the shareholders of the Association.

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3. The Association's By-Laws, as amended, are in full force and effect; and a true, correct and complete copy is attached hereto as Schedule B and incorporated herein by reference. Said By-Laws, still in full force and effect, were adopted September 17, 1942, by resolution, after proper notice of consideration and adoption of By-Laws was given to each and every shareholder, at a regularly called meeting of the Board of Directors with a quorum present.

4. Pursuant to the authority vested in it by an Act of Congress approved December 23, 1913 and known as the Federal Reserve Act, as amended, the Federal Reserve Board (now the Board of Governors of the Federal Reserve System) has granted to the Association now known as "First Security Bank, National Association" of Ogden, Utah, the right to act, when not in contravention of State or local law, as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies or other corporations which come into competition with National Banks are permitted to act under the laws of the State of Utah; and under the provisions of applicable law, the authority so granted remains in full force and effect.

5. Pursuant to authority vested by Act of Congress (12 U.S.C. 92a and 12 U.S.C. 481, as amended) the Comptroller of the Currency has issued Regulation 9, as amended, dealing, in part, with the Fiduciary Powers of National Banks, said regulation providing in subparagraph 9.7 (a) (1-2):

- (1) The board of directors is responsible for the proper exercise of fiduciary powers by the Bank. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the Bank in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the Bank's fiduciary powers as it may consider proper to assign to such director(s), officer(s), employee(s) or committee(s) as it may designate.
- (2) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have designated the performance of that responsibility. . . .

6. A Resolution relating to Exercise of Fiduciary Powers was adopted by the Board of Directors at a meeting held July 26, 1994 at which time there was a quorum present; said resolution is still in full force and effect and has not been rescinded. Said resolution is attached hereto as Schedule C and incorporated herein by reference.

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7. A Resolution relating to the Designation of Officers and Employees to Exercise Fiduciary Powers was adopted by the Trust Policy Committee at a meeting held February 7, 1996 at which time a quorum was present; said resolution is still in full force and effect and has not been rescinded. Said resolution is attached hereto as Schedule D and is incorporated herein by reference.

8. Attached hereto as Schedule E and incorporated herein by reference, is a listing of facsimile signatures of persons authorized (herein "Authorized Signatory or Signatories") on behalf of the Association and its Trust Group to act in exercise of its fiduciary powers subject to the resolutions in Paragraphs 6 and 7, above.

9. The principal office of the First Security Bank, National Association, Trust Group and of its departments, except for the St. George, Utah, Ogden, Utah, and Provo, Utah, branch offices, is located at 79 South Main Street, Salt Lake City, Utah 84111 and all records relating to fiduciary accounts are located at such principal office of the Trust Group or in storage facilities within Salt Lake County, Utah, except for those of the Ogden, Utah, St. George, Utah, and Provo, Utah, branch offices, which are located at said office.

10. Each Authorized Signatory (i) is a duly elected or appointed, duly qualified officer or employee of the Association; (ii) holds the office or job title set forth below his or her name on the date hereof; (iii) and the facsimile signature appearing opposite the name of each such officer or employee is a true replica of his or her signature.

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Association this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

-----  
R. James Steenblik  
Senior Vice President  
Assistant Secretary

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Schedule A

Articles of Association

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Schedule B

Bylaws

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Schedule C

Resolution Relating to  
Exercise of Fiduciary Powers

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Schedule D

Resolution Relating to the  
Designation of Officers and Employees  
to Exercise Fiduciary Powers

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Schedule E

Authorized Signatory or Signatories

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EXHIBIT G

[Outside Counsel Opinion for the Owner Trustee]  
(Pursuant to Section 5.3(bb) of the  
Participation Agreement)

-----, -----

TO THOSE ON THE ATTACHED DISTRIBUTION LIST

Re: Trust Agreement dated as of June 2, 1999

Dear Sirs:

We have acted as special counsel for First Security Bank, National Association, a national banking association, in its individual capacity ("FSB") and in its capacity as trustee (the "Owner Trustee") under the Trust Agreement dated as of June 2, 1999 (the "Trust Agreement") by and among it and First Union National Bank, as holder (the "Holder"), in connection with the execution and delivery by the Owner Trustee of the Operative Agreements to which it is a party. Except as otherwise defined herein, the terms used herein shall have the meanings set forth in Appendix A to the Participation Agreement dated as of June 2, 1999 (the "Participation Agreement") by and among Dollar Tree Distribution, Inc. (the "Lessee"), the various parties thereto from time to time, as guarantors (the "Guarantors"), First Security Bank, National Association, as the Owner Trustee and First Union National Bank, as lender and holder (in such capacity, "Bank").

We have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or advisable for the purpose of rendering this opinion.

Based upon the foregoing, we are of the opinion that:

1. FSB is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America and each of FSB and the Owner Trustee has under the laws of the State of Utah and federal banking law the power and authority to enter into and perform its obligations under the Trust Agreement and each other Operative Agreement to which it is a party.

2. The Owner Trustee is the duly appointed trustee under the Trust Agreement.

3. The Trust Agreement has been duly authorized, executed and delivered by one (1) of the officers of FSB and, assuming due authorization, execution and delivery by the Holder, is a legal, valid and binding obligation of the Owner Trustee (and to the extent set forth therein, against FSB), enforceable against the Owner Trustee (and to the extent set forth therein,

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against FSB) in accordance with its terms, and the Trust Agreement creates under the laws of the State of Utah for the Holder the beneficial interest in the Trust Estate it purports to create and is a valid trust under the laws of the State of Utah.

4. The Operative Agreements to which it is party have been duly authorized, executed and delivered by FSB, and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of FSB, enforceable against FSB in accordance with their respective terms.

5. The Operative Agreements to which it is party have been duly authorized, executed and delivered by the Owner Trustee, and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of the Owner Trustee, enforceable against the Owner Trustee in accordance with their respective terms. The Notes and Certificates have been duly issued, executed and delivered by the Owner Trustee, pursuant to authorization contained in the Trust Agreement, and the Certificates are entitled to the benefits and security afforded by the Trust Agreement in accordance with its terms and the terms of the Trust Agreement.

6. The execution and delivery by each of FSB and the Owner Trustee of the Trust Agreement and the Operative Agreements to which it is a party, and compliance by FSB or the Owner Trustee, as the case may be, with all of the provisions thereof do not and will not contravene any Laws applicable to or binding on FSB, or as the Owner Trustee, or contravene the provisions of, or constitute a default under, its charter documents or by-laws or, to our knowledge after due inquiry, any indenture, mortgage contract or other agreement or instrument to which FSB or Owner Trustee is a party or by which it or any of its property may be bound or affected.

7. The execution and delivery of the Operative Agreements by each of FSB and the Owner Trustee and the performance by each of FSB and the Owner Trustee of their respective obligations thereunder does not require on or prior to the date hereof the consent or approval of, the giving of notice to, the registration or filing with, or the taking of any action in respect of any Governmental Authority or any court.

8. Assuming that the trust created by the Trust Agreement is treated as a grantor trust for federal income tax purposes within the contemplation of Section 671 through 678 of the Internal Revenue Code of 1986, there are no fees, taxes, or other charges (except taxes imposed on fees payable to the Owner Trustee) payable to the State of Utah or any political subdivision thereof in connection with the execution, delivery or performance by the Owner Trustee or the Bank, as the case may be, of the Operative Agreements or in connection with



the acquisition of any Property by the Owner Trustee or in connection with the making by the Holder of its investment in the Trust or its acquisition of the beneficial interest in the Trust Estate or in connection with the issuance and acquisition of the Certificates, or the Notes, and neither the Owner Trustee, the Trust Estate nor the trust created by the Trust Agreement will be subject to any fee, tax or other governmental charge (except taxes on fees payable to the Owner Trustee)

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under the laws of the State of Utah or any political subdivision thereof on, based on or measured by, directly or indirectly, the gross receipts, net income or value of the Trust Estate by reason of the creation or continued existence of the trust under the terms of the Trust Agreement pursuant to the laws of the State of Utah or the Owner Trustee's performance of its duties under the Trust Agreement.

9. There is no fee, tax or other governmental charge under the laws of the State of Utah or any political subdivision thereof in existence on the date hereof on, based on or measured by any payments under the Certificates, Notes or the beneficial interest in the Trust Estate, by reason of the creation of the trust under the Trust Agreement pursuant to the laws of the State of Utah or the Owner Trustee's performance of its duties under the Trust Agreement within the State of Utah.

10. Upon the filing of the financing statement on form UCC-1 in the form attached hereto as Schedule 1 with the Utah Division of Corporation and Commercial Code, the Bank's security interest in the Trust Estate will be perfected, to the extent that such perfection is governed by Article 9 of the Uniform Commercial Code as in effect in the State of Utah (the "Utah UCC").

Your attention is directed to the Utah UCC, which provides, in part, that a filed financing statement which does not state a maturity date or which states a maturity date of more than five (5) years is effective only for a period of five (5) years from the date of filing, unless within six (6) months prior to the expiration of said period a continuation statement is filed in the same office or offices in which the original statement was filed. The continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon the timely filing of a continuation statement, the effectiveness of the original financing statement is continued for five (5) years after the last date to which the original statement was effective. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

The foregoing opinions are subject to the following assumptions, exceptions and qualifications:

A. We are attorneys admitted to practice in the State of Utah and in rendering the foregoing opinions we have not passed upon, or purported to pass upon, the laws of any jurisdictions other than the State of Utah and the federal banking law governing the banking and trust powers of FSB. In addition, without limiting the foregoing we express no opinion with respect to (i) federal securities laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, and the Trust Indenture Act of 1939, as amended, (ii) the Federal Aviation Act of 1958, as amended, (iii) the Federal Communications Act of 1934, as amended, or (iv) state securities or blue sky laws. Insofar as the foregoing opinions relate to the legality, validity, binding effect and enforceability of the documents involved in these transactions, which by their terms are governed by the laws of a state other than Utah, we have assumed that the laws of such state (as to which we express no opinion), are in all material aspects identical to the laws of the State of Utah.

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B. The opinions set forth in paragraphs 3, 4, and 5 above are subject to the qualification that enforceability of the Trust Agreement and the other Operative Agreements to which FSB and the Owner Trustee are parties, in accordance with their respective terms, may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, receivership or similar laws affecting enforcement of creditors' rights generally, and (ii) general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

C. As to the documents involved in these transactions, we have assumed that each is a legal, valid and binding obligation of each party thereto, other than FSB or the Owner Trustee, and is enforceable against each such party in accordance with their respective terms.

D. We have assumed that all signatures, other than those of the Owner Trustee or FSB, on documents and instruments involved in these transactions are genuine, that all documents and instruments submitted to us as originals are

authentic, and that all documents and instruments submitted to us as copies conform with the originals, which facts we have not independently verified.

E. We do not purport to be experts in respect of, or express any opinion concerning laws, rules or regulations applicable to the particular nature of the equipment or property involved in these transactions.

F. We have made no investigation of, and we express no opinion concerning, the nature of the title to any part of the equipment or property involved in these transactions or the priority of any mortgage or security interest.

G. We have assumed that the Participation Agreement and the transactions contemplated thereby are not within the prohibitions of Section 406 of the Employee Retirement Income Security Act of 1974.

H. In addition to any other limitation by operation of law upon the scope, meaning, or purpose of this opinion, the opinions expressed herein speak only as of the date hereof. We have no obligation to advise the recipients of this opinion (or any third party) and make no undertaking to amend or supplement such opinions if facts come to our attention or changes in the current law of the jurisdictions mentioned herein occur which could affect such opinions the legal analysis, a legal conclusion or any information confirmation herein.

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I. This opinion is for the sole benefit of the Lessee, the Construction Agent, the Guarantors, the Owner Trustee, the Bank and their respective successors and assigns in matters directly related to the Participation Agreement or the transaction contemplated thereunder and may not be relied upon by any other person other than such parties and their respective successors and assigns without the express written consent of the undersigned. The opinions expressed in this letter are limited to the matter set forth in this letter, and no other opinions should be inferred beyond the matters expressly stated.

Very truly yours,

RAY, QUINNEY & NEBEKER

M. John Ashton

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#### SCHEDULE I

[Form of UCC-1 Financing Statement]

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#### Distribution List

First Union National Bank, as lender and holder

Dollar Tree Distribution, Inc., as the Construction Agent and the Lessee

The various parties to the Participation Agreement from time to time, as the Guarantors

First Security Bank, National Association, not individually, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1

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#### EXHIBIT H

[Outside Counsel Opinion for the Lessee]  
(Pursuant to Section 5.3(cc) of the Participation Agreement)

-----,-----

TO THOSE ON THE ATTACHED DISTRIBUTION LIST

Dear Sirs:

We have acted as special counsel to Dollar Tree Distribution, Inc., a Virginia corporation (the "Lessee") and the Guarantors (hereinafter defined) in connection with certain transactions contemplated by the Participation Agreement dated as of June 2, 1999 (the "Participation Agreement"), among the Lessee, the various parties thereto from time to time, as guarantors (the "Guarantors"), First Security Bank, National Association, as the Owner Trustee (the "Owner Trustee"), and First Union National Bank, as lender and holder ("Bank"). This opinion is delivered pursuant to Section 5.3(cc) of the Participation Agreement. All capitalized terms used herein, and not otherwise defined herein, shall have the meanings assigned thereto in Appendix A to the Participation Agreement.

In connection with the foregoing, we have examined originals, or copies certified to our satisfaction, of the Operative Agreements, and such other corporate, partnership or limited liability company documents and records of the Credit Parties, certificates of public officials and representatives of the Credit Parties as to certain factual matters, and such other instruments and documents which we have deemed necessary or advisable to examine for the purpose of this opinion. With respect to such examination, we have assumed (i) the statements of fact made in all such certificates, documents and instruments are true, accurate and complete; (ii) the due authorization, execution and delivery of the Operative Agreements by the parties thereto other than the Credit Parties; (iii) the genuineness of all signatures (other than the signatures of persons signing on behalf of the Credit Parties), the authenticity and completeness of all documents, certificates, instruments, records and corporate records submitted to us as originals and the conformity to the original instruments of all documents submitted to us as copies, and the authenticity and completeness of the originals of such copies; (iv) that all parties other than the Credit Parties have all requisite corporate power and authority to execute, deliver and perform the Operative Agreements; and (v) the enforceability of the Operative Agreements against all parties thereto other than the Credit Parties and respecting the opinion set forth below in section (i), First Security Bank, National Association, individually or as the Owner Trustee, as the case may be. We have further assumed that the laws of the States of [state of lawyer's admission] and [governing law of Participation Agreement] are substantively identical.

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Based on the foregoing, and having due regard for such legal considerations as we deem relevant, and subject to the limitations and assumptions set forth herein, including without limitation the matters set forth in the last two (2) paragraphs hereof, we are of the opinion that:

(a) Each Credit Party is a [corporation, partnership or limited liability company] duly [incorporated or organized], validly existing and in good standing under the laws of the state of its [incorporation/formation] and has the power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under the Operative Agreements to which it is a party. Each Credit Party is duly qualified to do business in all jurisdictions in which its failure to so qualify would materially impair its ability to perform its obligations under the Operative Agreements to which it is a party or its financial position or its business as now and now proposed to be conducted.

(b) The execution, delivery and performance by each Credit Party of the Operative Agreements to which it is a party have been duly authorized by all necessary [corporate] action on the part of each Credit Party and the Operative Agreements to which each Credit Party is a party have been duly executed and delivered by each Credit Party.

(c) The Operative Agreements to which each Credit Party is a party constitute valid and binding obligations of each Credit Party enforceable against each Credit Party in accordance with the terms thereof, subject to bankruptcy, insolvency, liquidation, reorganization, fraudulent conveyance, and similar laws affecting creditors' rights generally, and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law).

(d) The execution and delivery by each Credit Party of the Operative Agreements to which it is a party and compliance by each Credit Party with all of the provisions thereof do not and will not (i) contravene the provisions of, or result in any breach of or constitute any default under, or result in the creation of any Lien (other than Permitted Liens and Lessor Liens) upon any of its property under, its [Articles of Incorporation By-Laws, operating agreement, partnership agreement or other similar document of formation] or any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which any Credit Party is a party or by which any Credit Party or any property of any Credit Party may be bound or affected, or (ii) contravene any Laws or any order

of any Governmental Authority applicable to or binding on any Credit Party.

(e) No Governmental Action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery or performance by any Credit Party of any of the Operative Agreements to which any Credit Party is a party or for the acquisition, ownership, construction and completion of the Properties, except for those which have been obtained.

(f) Except as set forth on Schedule 1 hereto, there are no actions, suits or proceedings pending or to our knowledge, threatened against any Credit Party in any court or before any

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Governmental Authority, that concern the Properties or the interest of any Credit Party therein or that question the validity or enforceability of any Operative Agreement to which any Credit Party is a party or the overall transaction described in the Operative Agreements to which any Credit Party is a party.

(g) Neither the nature of the Properties, nor any relationship between any Credit Party and any other Person, nor any circumstance in connection with the execution, delivery and performance of the Operative Agreements to which any Credit Party is a party is such as to require any approval of stockholders of, or approval or consent of any trustee or holders of indebtedness of, any Credit Party, except for such approvals and consents which have been duly obtained and are in full force and effect.

(h) The Security Documents which have been executed and delivered as of the date of this opinion create, for the benefit of Bank, the security interests in the Collateral described therein which by their terms such Security Documents purport to create. Upon filing of the UCC-1 financing statements (attached hereto as Schedule 2) relating to the Security Documents in the recording offices of (A) the respective county clerk where the principal place of business of the Lessee is located and (B) the Secretary of State where the principal place of business of the Lessee is located, Bank will have a valid, perfected lien and security interest in that portion of the Collateral which can be perfected by the filing of UCC-1 financing statements under Article 9 of the UCC in [identify the state].

(i) [Reserved].

(j) The issuance, sale and delivery of the Notes and the issuance and delivery of the Certificates under the circumstances contemplated by the Participation Agreement do not, under existing law, require registration of the Notes or the Certificates being issued on the date hereof under the Securities Act of 1933, as amended, or the qualification of the Loan Agreement under the Trust Indenture Act of 1939, as amended.

This opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters stated herein. This opinion is based on and is limited to the laws of the States of [\_\_\_\_\_], and the federal laws of the United States of America. Insofar as the foregoing opinion relates to matters of law other than the foregoing, no opinion is hereby given.

This opinion is for the sole benefit of the Lessee, the Construction Agent, the Guarantors, the Owner Trustee, Bank and their respective successors and assigns and may not be relied upon by any other person other than such parties and their respective successors and assigns without the express written consent of the undersigned. The opinions expressed herein are as of the date hereof and we make no undertaking to amend or supplement such opinions if facts come to our attention or changes in the current law of the jurisdictions mentioned herein occur which could affect such opinions.

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Very truly yours,

[LESSEE'S OUTSIDE COUNSEL]

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Distribution List

First Union National Bank, as lender and holder

Dollar Tree Distribution, Inc., as the Construction Agent and the Lessee

The various parties to the Participation Agreement from time to time, as the

Guarantors

First Security Bank, National Association, not individually, but solely as the Owner Trustee under the DTSD Real Estate Trust 1999-1

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Schedule 1  
(Litigation)

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Schedule 2  
(UCC-1 Financing Statements)

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EXHIBIT I

DOLLAR TREE DISTRIBUTION, INC.

OFFICER'S CERTIFICATE  
(Pursuant to Section 5.5 of the Participation Agreement)

DOLLAR TREE DISTRIBUTION, INC., a Virginia corporation (the "Company") DOES HEREBY CERTIFY as follows:

1. The address for the subject Property is \_\_\_\_\_.
2. The Completion Date for the construction of Improvements at the Property occurred on \_\_\_\_\_.
3. The aggregate Property Cost for the Property was \$\_\_\_\_\_.
4. Attached hereto as Schedule 1 is the detailed, itemized documentation supporting the asserted Property Cost figures.
5. All representations and warranties of the Company in each Operative Agreement and in each certificate delivered pursuant thereto (including without limitation the Incorporated Representations and Warranties) are true and correct as of the Completion Date.

Capitalized terms used in this Officer's Certificate and not otherwise defined have the respective meanings ascribed thereto in the Participation Agreement dated as of June 2, 1999 among the Company, as the Lessee and as the Construction Agent, the various parties thereto from time to time, as guarantors (the "Guarantors"), First Security Bank, National Association, as the Owner Trustee and First Union National Bank, as lender and holder.

[The remainder of this page has been intentionally left blank.]

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IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

DOLLAR TREE DISTRIBUTION, INC.

By:  
Name:  
Title:

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Schedule I

(Itemized Documentation in Support of Asserted Property Cost)

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EXHIBIT J

JOINDER AGREEMENT

(Pursuant to Section 5.9(a) of the Participation Agreement)

THIS JOINDER AGREEMENT (as amended, modified, supplemented, restated and/or replaced from time to time, the "Agreement"), dated as of \_\_\_\_\_, is by and between \_\_\_\_\_, a \_\_\_\_\_ (the "Company"), and FIRST UNION NATIONAL BANK, as lender and holder ("Bank"). Capitalized terms not otherwise defined herein shall have the meanings set forth therefor in the Participation Agreement dated as of June 2, 1999 (as amended, modified, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among Dollar Tree Distribution, Inc., the various parties thereto from time to time, as the Guarantors, First Security Bank, National Association, as the Owner Trustee under the DTSD Real Estate Trust 1999-1 and Bank.

The Company is a Domestic Subsidiary, and, consequently, the Credit Parties are required by Section 8.3(n) of the Participation Agreement to cause the Company to become a "Guarantor".

Accordingly, the Company hereby agrees as follows with Bank:

1. The Company hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Company will be deemed to be a party to the Participation Agreement and a "Guarantor" for all purposes of the Participation Agreement and all other Operative Agreements, and shall have all of the obligations of a Guarantor under the Operative Agreements as if the Company had executed the Participation Agreement. The Company hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions applicable to the Guarantors contained in the Operative Agreements. Without limiting the generality of the foregoing terms of this paragraph 1, the Company hereby (i) jointly and severally together with the other Guarantors, guarantees to each Financing Party, as provided in Sections 6B.1 through 6B.8 of the Participation Agreement, the prompt payment and performance of the Company Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof.

2. THE COMPANY HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES TO THE PROVISIONS OF SECTION 12.7 OF THE PARTICIPATION AGREEMENT, INCLUDING WITHOUT LIMITATION THOSE PROVISIONS REGARDING GOVERNING LAW, SUBMISSION TO JURISDICTION, WAIVER OF JURY TRIAL, VENUE AND ARBITRATION. THIS PROVISION HAS BEEN SPECIFICALLY REVIEWED BY THE COMPANY.

3. The chief executive office and principal place of business of the Company are located at the location(s) set forth on Schedule 1 attached hereto.

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4. All notices and other communications to be delivered to the Company shall be directed to [\_\_\_\_\_] at its address set forth in Section 12.2 of the Participation Agreement or such other address as may be specified, in accordance with the terms of the Participation Agreement, by [\_\_\_\_\_] from time to time.

5. The Company hereby waives acceptance by the Financing Parties of the guaranty by the Company under Sections 6B.1 through 6B.8 of the Participation Agreement upon the execution of this Agreement by the Company.

6. This Agreement may be executed in multiple counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract.

7. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA.

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed by its authorized officers, and Bank has caused the same to be accepted by its authorized officer, as of the day and year first above written.

[COMPANY]

By:  
Name:  
Title:

Acknowledged and accepted:

FIRST UNION NATIONAL BANK,

as lender and holder

By:  
Name:  
Title:

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Schedule 1

[Chief Executive Office and  
Principal Place of Business of the Company]

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EXHIBIT K

DESCRIPTION OF MATERIAL LITIGATION  
PURSUANT TO SECTION 6.2(d) OF THE PARTICIPATION AGREEMENT

There are no material actions, suits or proceedings pending or, to our knowledge, threatened against any Credit Party in any court or before any Governmental Authority except as set forth below:

In February, 1998, Dollar Tree Stores, Inc., received a report that a customer, Lucy Ortiz, had been injured when the clasp on a retractable dog leash broke. The general liability insurance carriers for the Credit Parties (primary and umbrella) have been notified and are expected to cover fully any compensatory damages for which any of the Credit Parties may be liable. Ms. Ortiz has retained an attorney who has indicated she may seek punitive damages. Insurance against punitive damages is generally not available in Florida. Dollar Tree Stores, Inc., emphatically denies any liability for punitive damages and will vigorously defend against any such claim. It is not possible at this time to state whether an unfavorable outcome is either probable or remote, since no suit has been filed.

On April 14, 1998, a former retail store employee named Gloria J. Mosher filed a lawsuit in federal court in Chicago, Illinois against Dollar Tree Stores, Inc., and one of its store managers, alleging sexual harassment by the store manager, constructive discharge, and intentional infliction of emotional distress. Ms. Mosher is suing for \$3,000,000 in compensatory and punitive damages. Ms. Mosher has alleged the bulk of her damages are punitive. Dollar Tree Stores, Inc., emphatically denies Ms. Mosher's claims and is vigorously defending itself in this matter. We are unable to state whether an unfavorable outcome is either probable or remote, as the lawsuit has not reached a stage where such a judgment may be made.

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EXHIBIT L

[States of Incorporation/Formation and Principal Place of Business of Each  
Guarantor]  
(Pursuant to Section 6.2(i) of the Participation Agreement)

Guarantors	State of Incorporation/Formation	State of Principal Place of Business
Dollar Tree Stores, Inc.	Virginia	Virginia
Dollar Tree Management, Inc.	Virginia	Virginia

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EXHIBIT M

OFFICER'S COMPLIANCE CERTIFICATE  
(Pursuant to Section 8.3(k) of the Participation Agreement)

The undersigned, on behalf of Dollar Tree Stores, Inc., a Virginia corporation (the "Company"), hereby certifies to First Union National Bank, as lender and holder ("Bank"), under the Participation Agreement dated as of June 2, 1999 (as amended, modified, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among Dollar Tree Distribution, Inc., in its capacity as the Lessee and as the Construction Agent, the various parties thereto from time to time, as the Guarantors, First Security Bank, National Association, as the Owner Trustee and Bank, as follows:

1. This Certificate is delivered to you pursuant to Section 8.3(k) of the Participation Agreement. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Participation Agreement.

2. I have reviewed the financial statements of the Company and its Consolidated Subsidiaries dated as of \_\_\_\_\_, \_\_\_\_\_ and for the fiscal quarter then ended and such statements fairly present the financial condition of the Company and its Consolidated Subsidiaries as of the dates indicated and the results of its operations and cash flows for the period indicated.

3. I have reviewed the terms of the Operative Agreements and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and the condition of the Company and its Consolidated Subsidiaries during the accounting period covered by the financial statements referred to in Paragraph 2 above. Such review has not disclosed the existence during or at the end of such accounting period of any condition or event that constitutes a Default or Event of Default, nor do I have any knowledge of the existence of any such condition or event as at the date of this Certificate.

4. The ratio of Consolidated Funded Debt to Consolidated EBITDA and calculations determining such figure are set forth on the attached Schedule 1 and the Company and its Consolidated Subsidiaries are in compliance with the covenants referenced in Section 28.1 of the Lease and the covenants contained in Section 9 of the Lessee Credit Agreement as shown on such Schedule 1 and the Company and its Consolidated Subsidiaries are in compliance with the other covenants and restrictions referenced in Section 28.1 of the Lease and contained in Sections 7, 8 and 9 of the Lessee Credit Agreement.

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WITNESS the following signature as of the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

DOLLAR TREE STORES, INC.

By:  
Name:  
Title:

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Schedule 1  
to  
Officer's Compliance Certificate

[DATE]

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Appendix A  
Rules of Usage and Definitions

I. Rules of Usage



The following rules of usage shall apply to this Appendix A and the Operative Agreements (and each appendix, schedule, exhibit and annex to the foregoing) unless otherwise required by the context or unless otherwise defined therein:

(a) Except as otherwise expressly provided, any definitions set forth herein or in any other document shall be equally applicable to the singular and plural forms of the terms defined.

(b) Except as otherwise expressly provided, references in any document to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits are references to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits in or to such document.

(c) The headings, subheadings and table of contents used in any document are solely for convenience of reference and shall not constitute a part of any such document nor shall they affect the meaning, construction or effect of any provision thereof.

(d) References to any Person shall include such Person, its successors, permitted assigns and permitted transferees.

(e) Except as otherwise expressly provided, reference to any agreement means such agreement as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof.

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(f) Except as otherwise expressly provided, references to any law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor.

(g) When used in any document, words such as "hereunder", "hereto", "hereof" and "herein" and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof.

(h) References to "including" means including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.

(i) Each of the parties to the Operative Agreements and their counsel have reviewed and revised, or requested revisions to, the Operative Agreements, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in the construction and interpretation of the Operative Agreements and any amendments or exhibits thereto.

(j) Capitalized terms used in any Operative Agreements which are not defined in this Appendix A but are defined in another Operative Agreement shall have the meaning so ascribed to such term in the applicable Operative Agreement.

#### II. Definitions

"AAA" shall have the meaning given to such term in Section 12.7(d) of the Participation Agreement.

"ABR" shall mean, for any day, a rate per annum equal to the greater of (a) the Prime Lending Rate in effect on such day, and (b) the Federal Funds Effective Rate in effect on such day plus one-half of one percent (0.5%). For purposes hereof: "Prime Lending Rate" shall mean the rate announced by the Bank from time to time as its prime lending rate as in effect from time to time. The Prime Lending Rate is a reference rate and is one of several interest rate bases used by the Bank and does not necessarily represent the lowest or most favorable rate offered by the Bank actually charged to any customer. The Bank may make commercial loans or other loans at rates of interest at, above or below the Prime Lending Rate. The Prime Lending Rate shall change automatically and without notice from time to time as and when the prime lending rate of the Bank changes. "Federal Funds Effective Rate" shall mean, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members or the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on

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such transactions received by the Agent from three (3) Federal funds brokers of recognized standing selected by it. Any change in the ABR due to a change in the Prime Lending Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Lending Rate or the Federal Funds Effective Rate, respectively.

"ABR Holder Advance" shall mean a Holder Advance bearing a Holder Yield based on the ABR.

"ABR Loans" shall mean Loans the rate of interest applicable to which is based upon the ABR.

"Acceleration" shall have the meaning given to such term in Section 6 of the Credit Agreement.

"Accounts" shall have the meaning given to such term in Section 1 of the Security Agreement.

"Acquisition Advance" shall have the meaning given to such term in Section 5.3 of the Participation Agreement.

"Acquisition Loan" shall mean any Loan made in connection with an Acquisition Advance.

"Additional Incorporated Terms" shall have the meaning given to such term in Section 28.1 of the Lease.

"Advance" shall mean a Construction Advance or an Acquisition Advance.

"Affiliate" shall mean, with respect to any Person, any Person or group acting in concert in respect of the Person in question that, directly or indirectly, controls or is controlled by or is under common control with such Person.

"After Tax Basis" shall mean, with respect to any payment to be received, the amount of such payment increased so that, after deduction of the amount of all taxes required to be paid by the recipient calculated at the then maximum marginal rates generally applicable to Persons of the same type as the recipients with respect to the receipt by the recipient of such amounts (less any tax savings realized as a result of the payment of the indemnified amount), such increased payment (as so reduced) is equal to the payment otherwise required to be made.

"Agency Agreement" shall mean the Agency Agreement, dated on or about the Initial Closing Date between the Construction Agent and the Lessor.

"Agency Agreement Event of Default" shall mean an "Event of Default" as defined in Section 5.1 of the Agency Agreement.

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"Applicable Percentage" shall mean for Eurodollar Loans, Eurodollar Holder Advances, ABR Loans and ABR Holder Advances and the appropriate applicable percentages corresponding to the ratio of Consolidated Funded Debt to Consolidated EBITDA in effect as of the most recent Calculation Date as shown below:

<TABLE>  
<CAPTION>

Pricing Level	Ratio of Consolidated Funded Debt to Consolidated EBITDA	Applicable Percentage for Eurodollar Loans	Applicable Percentage for Eurodollar Holder Advances	Applicable Percentage for ABR Loans	Applicable Percentage for ABR Holder Advances
<S>	<C>	<C>	<C>	<C>	<C>
Level I	Less than or equal to .75 to 1	0.50%	1.25%	0.00%	0.00%
Level II	Less than or equal to 1.25 to 1, but greater than .75 to 1	0.60%	1.35%	0.00%	0.75%
Level III	Greater than 1.25 to 1	1.05%	1.80%	0.00%	0.75%

</TABLE>

The Applicable Percentage for Eurodollar Loans, Eurodollar Holder Advances, ABR Loans and ABR Holder Advances shall, in each case, be determined and adjusted quarterly based upon, and as of, the fifth (5th) Business Day after the due date of the financial statements required to be delivered to the Bank under Section 8.3(m) (ii) of the Participation Agreement, Section 7.4(b) of the

Lessee Credit Agreement and Section 28.1 of the Lease (each a "Calculation Date"); provided, however, that (i) the initial Applicable Percentage, in each case, shall be based on Pricing Level I (as shown above) and shall remain at Pricing Level I until the occurrence of the Calculation Date relating to the first fiscal quarter of the Lessee occurring in fiscal year 1999 and, thereafter, the Pricing Level shall be determined by the then current ratio of Consolidated Funded Debt to Consolidated EBITDA, and (ii) if the Lessee fails to provide the written notice required by Section 8.3(k) of the Participation Agreement to the Agent on or before the most recent Calculation Date, the Applicable Percentage, in each case, from such Calculation Date shall be based on Pricing Level III until such time that such written notice is provided whereupon the Pricing Level shall be determined by the then current ratio of Consolidated Funded Debt to Consolidated EBITDA as specified in such notice. Each Applicable Percentage shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Applicable Percentage shall be applicable to all existing Eurodollar Loans, Eurodollar Holder Advances, ABR Loans and ABR Holder Advances as well as any new Eurodollar Loans, Eurodollar Holder Advances, ABR Loans and ABR Holder Advances made or issued.

"Appraisal" shall mean, with respect to any Property, an appraisal to be delivered in connection with the Participation Agreement or in accordance with the terms of the Lease, in each case prepared by a reputable appraiser reasonably acceptable to the Agent, which in the judgment of counsel to the Agent, complies with all of the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, the rules and regulations adopted pursuant thereto, and all other applicable Legal Requirements and otherwise satisfactory to the Bank.

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"Appraisal Procedure" shall have the meaning given such term in Section 22.4 of the Lease.

"Appurtenant Rights" shall mean (a) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to the Land underlying the Improvements or the Improvements, including without limitation the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to the Land and (b) all permits, licenses and rights, whether or not of record, appurtenant to such Land or the Improvements.

"Arbitration Rules" shall have the meaning given to such term in Section 12.7(d) of the Participation Agreement.

"Assignment and Acceptance" shall mean the Assignment and Acceptance in the form attached to the Credit Agreement as Exhibit B.

"Available Commitment" shall mean an amount equal to the excess, if any, of (a) the amount of the Commitment over (b) the aggregate principal amount of all Loans made as of such date after giving effect to Section 5.2(d) of the Participation Agreement (but without giving effect to any other repayments or prepayments of any Loans hereunder).

"Available Holder Commitments" shall mean an amount equal to the excess, if any, of (a) the aggregate amount of the Holder Commitments over (b) the aggregate amount of the Holder Advances made since the Initial Closing Date after giving effect to Section 5.2(d) of the Participation Agreement (but without giving effect to any other repayments or prepayments of any Holder Advances).

"Bank" shall mean First Union National Bank, a national banking association, and its permitted successors and assigns.

"Bankruptcy Code" shall mean Title 11 of the U. S. Code entitled "Bankruptcy," as now or hereafter in effect or any successor thereto.

"Basic Documents" shall mean the following: the Participation Agreement the Agency Agreement, the Trust Agreement, the Certificates, the Credit Agreement, the Notes, the Lease and the Security Agreement.

"Basic Rent" shall mean, the sum of (a) the Loan Basic Rent and (b) the Lessor Basic Rent, calculated as of the applicable date on which Basic Rent is due.

"Bill of Sale" shall mean a Bill of Sale regarding Equipment in form and substance satisfactory to the Agent.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

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"Borrower" shall mean the Owner Trustee, not in its individual capacity but as Borrower under the Credit Agreement.

"Borrowing Date" shall mean any Business Day specified in a notice delivered pursuant to Section 2.3 of the Credit Agreement as a date on which the Lessor requests the Bank to make Loans hereunder.

"Budgeted Total Property Cost" shall mean, at any date of determination with respect to any Construction Period Property, an amount equal to the aggregate amount which the Construction Agent in good faith expects to be expended in order to achieve Completion with respect to such Property.

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in North Carolina, or any other states from which the Bank funds or engages in administrative activities with respect to the transactions under the Operative Agreements are authorized or required by law to close; provided, however, that when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"Capitalized Lease" shall mean, as applied to any Person, any lease of property (whether real, personal, tangible, intangible or mixed of such Person) by such Person as the lessee which would be capitalized on a balance sheet of such Person prepared in accordance with GAAP.

"Capital Stock" shall mean any nonredeemable capital stock of the Lessee or any of its Subsidiaries, whether common or preferred.

"Casualty" shall mean any damage or destruction of all or any portion of the Property as a result of a fire or other casualty.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. ss. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986.

"Certificate" shall mean a Certificate in favor of the Bank regarding the Holder Commitment issued pursuant to the terms and conditions of the Trust Agreement.

"Chattel Paper" shall have the meaning given to such term in Section 1 of the Security Agreement.

"Claims" shall mean any and all obligations, liabilities, losses, actions, suits, penalties, claims, demands, costs and expenses (including without limitation reasonable attorney's fees and expenses) of any nature whatsoever.

"Closing Date" shall mean the Initial Closing Date and each Property Closing Date.

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"Code" shall mean the Internal Revenue Code of 1986 together with rules and regulations promulgated thereunder, as amended from time to time, or any successor statute thereto.

"Collateral" shall mean all assets of the Lessor, the Construction Agent and the Lessee, now owned or hereafter acquired, upon which a Lien is purported to be created by one or more of the Security Documents.

"Commencement Date" shall have the meaning specified in Section 2.2 of the Lease.

"Commitment" shall mean the obligation of the Bank to make Loans to the Lessor in an aggregate principal amount at any time outstanding not to exceed the Lender Commitment.

"Commitment Period" shall mean the period from and including the Initial Closing Date to and including the Construction Period Termination Date, or such earlier date as the Commitments shall terminate as provided in the Credit Agreement or the Holder Commitment shall terminate as provided in the Trust Agreement.

"Company Obligations" shall mean the obligations of Dollar Tree Distribution, Inc., in any and all capacities under and with respect to the Operative Agreements and each Property.

"Completion" shall mean, with respect to a Property, such time as the acquisition, installation, testing and final completion of the Improvements on such Property has been achieved in accordance with the Plans and Specifications, the Agency Agreement and/or the Lease, and in compliance with all Legal

Requirements and Insurance Requirements and a certificate of occupancy has been issued with respect to such Property by the appropriate governmental entity (except if non-compliance, individually or in the aggregate, shall not have and could not reasonably be expected to have a Material Adverse Effect). If the Lessor purchases a Property that includes existing Improvements that are to be immediately occupied by the Lessee without any improvements financed pursuant to the Operative Agreements, the date of Completion for such Property shall be the Property Closing Date.

"Completion Date" shall mean, with respect to a Property, the earlier of (a) the date on which Completion for such Property has occurred or (b) the Construction Period Termination Date.

"Condemnation" shall mean any taking or sale of the use, access, occupancy, easement rights or title to any Property or any part thereof, wholly or partially (temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain, including without limitation an action by a Governmental Authority to change the grade of, or widen the streets adjacent to, any Property or alter the pedestrian or vehicular traffic flow to any Property so as to result in a change in access to such Property, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action.

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"Consolidated EBITDA" shall mean, for any period, the aggregate of (i) the Consolidated Net Income (or Deficit) of DTS and its Subsidiaries for such period, plus (ii) the sum of interest expense, federal, state or local income taxes, depreciation, amortization of intangible assets and other noncash expenses or charges reducing income for such period, all to the extent taken into account in the calculation of such Consolidated Net Income (or Deficit) for such period, minus (iii) the sum of extraordinary or nonrecurring gains (including in connection with the sale or write-up of assets) and other noncash credits increasing income for such period, all to the extent taken into account in the calculation of such Consolidated Net Income (or Deficit) for such period.

"Consolidated Funded Debt" shall mean, at any time, the outstanding balances of all Indebtedness or other extensions of credit in favor of DTS and its Subsidiaries (on a consolidated basis), plus Capitalized Leases of DTS and its Subsidiaries (on a consolidated basis).

"Consolidated Net Income (or Deficit)" shall mean, for any period, net income on a consolidated basis determined in accordance with GAAP applied on a consistent basis, but excluding any extraordinary gains or losses and related tax effects thereon.

"Consolidated Subsidiary" shall mean, as to any Person, any Subsidiary of such Person which under the rules of GAAP consistently applied should have its financial results consolidated with those of such Person for purposes of financial accounting statements.

"Construction Advance" shall mean an advance of funds to pay Property Costs pursuant to Section 5.4 of the Participation Agreement.

"Construction Agent" shall mean Dollar Tree Distribution, Inc., a Virginia corporation, as the construction agent under the Agency Agreement.

"Construction Budget" shall mean the cost of acquisition, installation, testing, constructing and developing any Property as determined by the Construction Agent in its reasonable, good faith judgment.

"Construction Commencement Date" shall mean, with respect to Improvements, the date on which construction of such Improvements commences pursuant to the Agency Agreement.

"Construction Contract" shall mean any contract entered into between the Construction Agent or the Lessee with a Contractor for the construction of Improvements or any portion thereof on the Property.

"Construction Loan" shall mean any Loan made in connection with a Construction Advance.

"Construction Loan Property Cost" shall mean with respect to each Construction Period Property at the date of determination, an amount equal to (a) the aggregate principal amount of Construction Loans made on or prior to such date with respect to the Property minus (b) the

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aggregate principal amount of prepayments or repayments of the Loans allocated

to reduce the Construction Loan Property Cost of such Property pursuant to Section 2.6(c) of the Credit Agreement.

"Construction Period" shall mean, with respect to a Property, the period commencing on the Construction Commencement Date for such Property and ending on the Completion Date for such Property.

"Construction Period Property" means, at any date of determination, any Property as to which the Rent Commencement Date has not occurred on or prior to such date.

"Construction Period Termination Date" shall mean (a) the earlier of (i) the date that the Commitments have been terminated in their entirety in accordance with the terms of Section 2.5(a) of the Credit Agreement, or (ii) the second anniversary of the Initial Closing Date or (b) such later date as shall be agreed to by the Bank.

"Contractor" shall mean each entity with whom the Construction Agent or the Lessee contracts to construct any Improvements or any portion thereof on the Property.

"Controlled Group" shall mean all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Lessee, are treated as a single employer under Section 414 of the Code.

"Co-Owner Trustee" shall have the meaning specified in Section 9.2 of the Trust Agreement.

"Credit Agreement" shall mean the Credit Agreement, dated on or about the Initial Closing Date, among the Lessor and the Bank.

"Credit Agreement Default" shall mean any event or condition which, with the lapse of time or the giving of notice, or both, would constitute a Credit Agreement Event of Default.

"Credit Agreement Event of Default" shall mean any event or condition defined as an "Event of Default" in Section 6 of the Credit Agreement.

"Credit Documents" shall mean the Participation Agreement, the Credit Agreement, the Notes and the Security Documents.

"Credit Parties" shall mean the Construction Agent, the Lessee and each Guarantor.

"Deed" shall mean a warranty deed regarding the Land and/or Improvements in form and substance satisfactory to the Bank.

"Default" shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

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"Deficiency Balance" shall have the meaning given in Section 22.1(b) of the Lease Agreement.

"Disputes" shall have the meaning given to such term in Section 12.7(d) of the Participation Agreement.

"Documents" shall have the meaning given to such term in Section 1 of the Security Agreement.

"Dollars" and "\$" shall mean dollars in lawful currency of the United States of America.

"Dollar Tree" shall mean Dollar Tree Distribution, Inc., a Virginia corporation, and its successors and permitted assignees.

"Domestic Subsidiary" shall mean, with respect to any Person, any Subsidiary of such Person which is incorporated or organized under the laws of any State of the United States or the District of Columbia.

"DTS" shall mean Dollar Tree Stores, Inc., a Virginia corporation, and its successors and permitted assigns.

"DTSD Realty Trust 1999-1" shall mean the grantor trust created pursuant to the terms and conditions of the Trust Agreement.

"Election Date" shall have the meaning given to such term in Section 20.1 of the Lease.

"Election Notice" shall have the meaning given to such term in Section 20.1 of the Lease.

"Employee Benefit Plan" or "Plan" shall mean an employee benefit plan (within the meaning of Section 3(3) of ERISA, including without limitation any Multiemployer Plan), or any "plan" as defined in Section 4975(e)(1) of the Code and as interpreted by the Internal Revenue Service and the Department of Labor in rules, regulations, releases or bulletins in effect on any Closing Date.

"Environmental Claims" shall mean any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding, or claim (whether administrative, judicial, or private in nature) arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Substance, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Substance, Environmental Law, or other order of a Tribunal or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

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"Environmental Laws" shall mean any Law, permit, consent, approval, license, award, or other authorization or requirement of any Tribunal relating to emissions, discharges, releases, threatened releases of any Hazardous Substance into ambient air, surface water, ground water, publicly owned treatment works, septic system, or land, or otherwise relating to the handling, storage, treatment, generation, use, or disposal of Hazardous Substances, pollution or to the protection of health or the environment, including without limitation CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. ss. 6901, et seq., and state statutes analogous thereto.

"Environmental Violation" shall mean any activity, occurrence or condition that violates or threatens (if the threat requires remediation under any Environmental Law and is not remediated during any grace period allowed under such Environmental Law) to violate or results in or threatens (if the threat requires remediation under any Environmental Law and is not remediated during any grace period allowed under such Environmental Law) to result in noncompliance with any Environmental Law.

"Equipment" shall mean personal property of every kind and nature whatsoever purchased, leased or otherwise acquired using the proceeds of the Loans or the Holder Advances by the Construction Agent, the Lessee or the Lessor and all improvements and modifications thereto and replacements thereof, whether or not now owned or hereafter acquired or now or subsequently attached to, contained in or used or usable in any way in connection with any operation of any Improvements.

"Equipment Schedule" shall mean (a) each Equipment Schedule attached to the applicable Requisition and (b) each Equipment Schedule attached to the applicable Lease Supplement.

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

"ERISA Affiliate" shall mean each entity required to be aggregated with the Lessee pursuant to the requirements of Section 414(b) or (c) of the Code.

"Eurocurrency Reserve Requirements" shall mean for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal) of reserve requirements in effect on such day (including without limitation basic, supplemental, marginal and emergency reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto) dealing with reserve requirements prescribed on eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D) maintained by a member bank of the Federal Reserve System.

"Eurodollar Holder Advance" shall mean a Holder Advance bearing a Holder Yield based on the Eurodollar Rate.

"Eurodollar Loans" shall mean Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

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"Eurodollar Rate" shall mean for the Interest Period for each Eurodollar Loan or Eurodollar Holder Advance comprising part of the same borrowing or advance (including without limitation conversions, extensions and renewals), a per annum interest rate equal to the per annum rate determined by the Bank on the basis of the offered rates for deposits in dollars for a period of time corresponding to such Interest Period (and commencing on the first day of such Interest Period), reported on Telerate page 3750 as of 11:00 a.m.

(London time) two (2) Business Days before the first day of such Interest Period. In the event no such offered rates appear on Telerate page 3750, "Eurodollar Rate" shall mean for the Interest Period for each Eurodollar Loan or Eurodollar Holder Advance comprising part of the same borrowing or advance (including without limitation conversions, extensions and renewals), a per annum interest rate equal to the per annum rate determined by the Bank on the basis of the offered rates for deposits in dollars for a period of time corresponding to such Interest Period (and commencing on the first day of such Interest Period), which appear on the Reuters Screen LIBO Page as of 11:00 a.m. (London time) two (2) Business Days before the first day of such Interest Period (provided that if at least two (2) such offered rates appear on the Reuters Screen LIBO Page, the rate in respect of such Interest Period will be the arithmetic mean of such offered rates). As used herein, "Reuters Screen LIBO Page" means the display designated as page "LIBO" on the Reuters Monitor Money Rates Service (or such other page as may replace the LIBO page on that service for the purpose of displaying London interbank offered rates of major banks) ("RMMRS"). In the event the RMMRS is not then quoting such offered rates, "Eurodollar Rate" shall mean for the Interest Period for each Eurodollar Loan or Eurodollar Holder Advance comprising part of the same borrowing or advance (including without limitation conversions, extensions and renewals), the average (rounded upward to the nearest one-sixteenth (1/16) of one percent (1%)) per annum rate of interest determined by the Bank (each such determination to be conclusive and binding) as of two (2) Business Days prior to the first day of such Interest Period, as the effective rate at which deposits in immediately available funds in U.S. dollars are being, have been, or would be offered or quoted by the Bank to major banks in the applicable interbank market for Eurodollar deposits at any time during the Business Day which is the second Business Day immediately preceding the first day of such Interest Period, for a term comparable to such Interest Period and in the amount of the requested Eurodollar Loan and/or Eurodollar Holder Advance. If no such offers or quotes are generally available for such amount, then the Bank shall be entitled to determine the Eurodollar Rate from another recognized service or interbank quotation, or by estimating in its reasonable judgment the per annum rate (as described above) that would be applicable if such quote or offers were generally available.

"Event of Default" shall mean a Lease Event of Default, an Agency Agreement Event of Default or a Credit Agreement Event of Default.

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"Excepted Payments" shall mean:

(a) all indemnity payments (including without limitation indemnity payments made pursuant to Section 11 of the Participation Agreement), whether made by adjustment to Basic Rent or otherwise, to which the Owner Trustee, or any of its respective Affiliates, agents, officers, directors or employees is entitled;

(b) any amounts (other than Basic Rent or Termination Value) payable under any Operative Agreement to reimburse the Owner Trustee, or any of its Affiliates (including without limitation the reasonable expenses of the Owner Trustee or the Trust Company and incurred in connection with any such payment) for performing or complying with any of the obligations of the Lessee under and as permitted by any Operative Agreement;

(c) any insurance proceeds (or payments with respect to risks self-insured or policy deductibles) under liability policies other than such proceeds or payments payable to the Bank;

(d) any insurance proceeds under policies maintained by the Owner Trustee or the Bank;

(e) Transaction Expenses or other amounts, fees, disbursements or expenses paid or payable to or for the benefit of the Owner Trustee;

(f) all right, title and interest of the Owner Trustee to any Property or any portion thereof or any other property to the extent any of the foregoing has been released from the Liens of the Security Documents and the Lease pursuant to the terms thereof;

(g) upon termination of the Credit Agreement pursuant to the terms thereof, all remaining property covered by the Lease or Security Documents;

(h) any payments in respect of interest to the extent attributable to payments referred to in clauses (a) through (g) above; and

(i) any rights of either the Owner Trustee or the Trust Company to demand, collect, sue for or otherwise receive and enforce payment of any of the foregoing amounts, provided that such rights shall not include the right to terminate the Lease.



"Excess Proceeds" shall mean the excess, if any, of the aggregate of all awards, compensation or insurance proceeds payable in connection with a Casualty or Condemnation over the Termination Value paid by the Lessee pursuant to the Lease with respect to such Casualty or Condemnation.

"Exculpated Persons" shall mean the Trust Company (except with respect to the representations and warranties and the other obligations of the Trust Company pursuant to the

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Operative Agreements expressly undertaken in its individual capacity, including without limitation the representations and warranties of the Trust Company pursuant to Section 6.1 of the Participation Agreement, the obligations of the Trust Company pursuant to Section 8.2 of the Participation Agreement and the obligations of the Trust Company pursuant to the Trust Agreement), the Bank (except with respect to the obligations of the Bank expressly undertaken pursuant to the Participation Agreement and the Trust Agreement, their officers, directors, shareholders and partners.

"Exempt Payments" shall have the meaning specified in Section 11.2(e) of the Participation Agreement.

"Expiration Date" shall mean the last day of the Term; provided, in no event shall the Expiration Date be later than the fifth annual anniversary of the Initial Closing Date, unless such later date has been expressly agreed to in writing by each of the Lessor, the Lessee and the Bank.

"Fair Market Sales Value" shall mean, with respect to any Property, the amount, which in any event, shall not be less than zero (0), that would be paid in cash in an arms-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, such Property. Fair Market Sales Value of any Property shall be determined based on the assumption that, except for purposes of Section 17 of the Lease, such Property is in the condition and state of repair required under Section 10.1 of the Lease and the Lessee is in compliance with the other requirements of the Operative Agreements.

"Federal Funds Effective Rate" shall have the meaning given to such term in the definition of ABR.

"Financing Parties" shall mean the Lessor, the Owner Trustee, in its trust capacity, the Bank, as Holder and Lender, and their respective successors and assigns.

"First Union" shall mean First Union National Bank, a national banking association, and its permitted successors and assigns.

"Fixtures" shall mean all fixtures relating to the Improvements, including without limitation all components thereof, located in or on the Improvements, together with all replacements, modifications, alterations and additions thereto.

"Force Majeure Event" shall mean any event beyond the control of the Construction Agent, other than a Casualty or Condemnation, including without limitation strikes, lockouts, adverse soil conditions, acts of God, adverse weather conditions, inability to obtain labor or materials, governmental activities, civil commotion and enemy action; but excluding any event, cause or condition that results from the Construction Agent's financial condition.

"GAAP" shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the accounting principles board of the American Institute of Certified

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Public Accountants, and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, that are applicable to the circumstances as of the date of determination.

"Governmental Action" shall mean all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Legal Requirement, and shall include, without limitation, all environmental and operating permits and licenses that are required for the full use, occupancy, zoning and operating of the Property.

"Governmental Authority" shall mean any nation or government, any state

or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Ground Lease" shall mean a ground lease (in form and substance satisfactory to the Agent) respecting any Property (a) owned by the Lessee (or a parent corporation or any Subsidiary of the Lessee) and leased to the Lessor where such lease has at least a ninety-nine (99) year term and payments set at no more than \$1.00 per year, or (b) where such lease is subject to such other terms and conditions as are satisfactory to the Bank.

"Guarantors" shall mean the various parties to the Participation Agreement from time to time, as guarantors of the Construction Agent and the Lessee with respect to the Operative Agreements and the Properties.

"Hard Costs" shall mean all costs and expenses payable for supplies, materials, labor and profit with respect to the Improvements under any Construction Contract.

"Hazardous Substance" shall mean any of the following: (a) any petroleum or petroleum product, explosives, radioactive materials, asbestos, formaldehyde, polychlorinated biphenyls, lead and radon gas; (b) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste, or pollutant, in each case whether naturally occurring, man-made or the by-product of any process, that is toxic, harmful or hazardous to the environment or human health or safety as determined in accordance with any Environmental Law; or (c) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law.

"Holder" shall mean the Bank as the holder of one or more Certificates in connection with the DTSD Realty Trust 1999-1.

"Holder Advance" shall mean any advance made by the Bank to the Owner Trustee pursuant to the terms of the Trust Agreement or the Participation Agreement.

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"Holder Amount" shall mean as of any date, the aggregate amount of Holder Advances made by the Bank to the Trust Estate pursuant to Section 2 of the Participation Agreement and Section 3.1 of the Trust Agreement less any payments of any Holder Advances received by the Bank pursuant to Section 3.4 of the Trust Agreement.

"Holder Commitments" shall mean \$540,000, as such amount may be increased or reduced from time to time in accordance with the provisions of the Operative Agreements.

"Holder Construction Property Cost" shall mean, with respect to each Construction Period Property, at any date of determination, an amount equal to the outstanding Holder Advances made with respect thereto under the Trust Agreement.

"Holder Overdue Rate" shall mean the lesser of (a) the then current rate of Holder Yield respecting the particular amount in question plus two percent (2%) and (b) the highest rate permitted by applicable law.

"Holder Property Cost" shall mean with respect to a Property an amount equal to the outstanding Holder Advances with respect thereto.

"Holder Yield" shall mean with respect to Holder Advances from time to time either the Eurodollar Rate plus the Applicable Percentage for Eurodollar Holder Advances or the ABR plus the Applicable Percentage for ABR Holder Advances as elected by the Owner Trustee from time to time with respect to such Holder Advances in accordance with the terms of the Trust Agreement; provided, however, (a) the outstanding Holder Advances shall bear a yield at the ABR applicable from time to time from and after the dates and during the periods specified in Section 3.7(c) of the Trust Agreement, and (b) the Holder Advances shall bear a yield at the ABR applicable from time to time after the dates and during the periods specified in Section 11.3(f) of the Participation Agreement.

"Impositions" shall mean any and all liabilities, losses, expenses, costs, charges and Liens of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or withholdings ("Taxes") including but not limited to (i) real and personal property taxes, including without limitation personal property taxes on any property covered by the Lease that is classified by Governmental Authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) excise taxes; (iv) real estate transfer taxes, conveyance taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of

franchise, income, value added, privilege and doing business taxes, license and registration fees; (vi) assessments on any Property, including without limitation all assessments for public Improvements or benefits, whether or not such improvements are commenced or completed within the Term; and (vii) taxes, Liens, assessments or charges asserted, imposed or assessed by the PBGC or any governmental authority succeeding to or performing functions similar to, the PBGC; and in each case all interest, additions to tax and penalties thereon, which at any time prior to, during or with respect to the Term or in respect of any period for which the Lessee shall

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be obligated to pay Supplemental Rent, may be levied, assessed or imposed by any Governmental Authority upon or with respect to (a) any Property or any part thereof or interest therein; (b) the leasing, financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, activity conducted on, delivery, insuring, use, operation, improvement, sale, transfer of title, return or other disposition of such Property or any part thereof or interest therein; (c) the Notes, other indebtedness with respect to any Property, or the Certificates, or any part thereof or interest therein; (d) the rentals, receipts or earnings arising from any Property or any part thereof or interest therein; (e) the Operative Agreements, the performance thereof, or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to any Property or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract (including the Agency Agreement) relating to the construction, acquisition or delivery of the Improvements or any part thereof or interest therein; (h) the issuance of the Notes or the Certificates; (i) the Owner Trustee, the Trust or the Trust Estate; or (j) otherwise in connection with the transactions contemplated by the Operative Agreements.

"Improvements" shall mean, with respect to the construction, renovations and/or Modifications on any Land, all buildings, structures, Fixtures, and other improvements of every kind existing at any time and from time to time on or under the Land purchased or otherwise acquired using the proceeds of the Loans or the Holder Advances or which is subject to a Ground Lease, together with any and all appurtenances to such buildings, structures or improvements, including without limitation sidewalks, utility pipes, conduits and lines, parking areas and roadways, and including without limitation all Modifications and other additions to or changes in the Improvements at any time, including without limitation (a) any Improvements existing as of the Property Closing Date as such Improvements may be referenced on the applicable Requisition and (b) any Improvements made subsequent to such Property Closing Date.

"Incorporated Covenants" shall have the meaning given to such term in Section 28.1 of the Lease.

"Incorporated Representations and Warranties" shall have the meaning given to such term in Section 28.1 of the Lease.

"Indebtedness" of a Person shall mean, without duplication, such Person's:

- (a) obligations for borrowed money;
- (b) obligations representing the deferred purchase price of Property (whether real, personal, tangible, intangible or mixed) or services (other than accounts payable arising in the ordinary course of such Person's business payable on terms customary in the trade);
- (c) obligations, whether or not assumed, secured by liens or payable out of the proceeds or production from property now or hereafter owned or acquired by such Person;

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- (d) obligations which are evidenced by notes, acceptances or other instruments;
- (e) Capitalized Lease obligations;
- (f) net liabilities under interest rate swap, exchange or cap agreements; and
- (g) contingent obligations.

"Indemnified Person" shall mean the Lessor, the Owner Trustee, in its individual and its trust capacity, the Trust, the Trust Company, the Bank and their respective successors, assigns, directors, shareholders, partners,

officers, employees, agents and Affiliates.

"Indemnity Provider" shall mean, respecting each Property, the Lessee.

"Initial Closing Date" shall mean June 4, 1999.

"Initial Construction Advance" shall mean any initial Advance to pay for: (a) Property Costs for construction of any Improvements; and (b) the Property Costs of restoring or repairing any Property which is required to be restored or repaired in accordance with Section 15.1(c) of the Lease.

"Instruments" shall have the meaning given to such term in Section 1 of the Security Agreement.

"Insurance Requirements" shall mean all terms and conditions of any insurance policy either required by the Lease to be maintained by the Lessee or required by the Agency Agreement to be maintained by the Construction Agent, and all requirements of the issuer of any such policy and, regarding self insurance, any other requirements of the Lessee.

"Interest Period" shall mean during the Commitment Period and thereafter as to any Eurodollar Loan or Eurodollar Holder Advance (i) with respect to the initial Interest Period, the period beginning on the date of the first Eurodollar Loan and Eurodollar Holder Advance and ending one (1) month, two (2) months, three (3) months or six (6) months thereafter, as selected by the Lessor (in the case of a Eurodollar Loan) or the Owner Trustee (in the case of a Eurodollar Holder Advance) in its applicable notice given with respect thereto and (ii) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan or Eurodollar Holder Advance and ending one (1) month, two (2) months, three (3) months or six (6) months thereafter, as selected by the Lessor by irrevocable notice to the Bank (in the case of a Eurodollar Loan) or by the Owner Trustee (in the case of a Eurodollar Holder Advance) in each case not less than two (2) Business Days prior to the last day of the then current Interest Period with respect thereto; provided, however, that all of the foregoing provisions relating to Interest Periods are subject to the following: (A) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the

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next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (B) no Interest Period shall extend beyond the Maturity Date or the Expiration Date, as the case may be, (C) where an Interest Period begins on a day for which there is no numerically corresponding day in the calendar month in which the Interest Period is to end, such Interest Period shall end on the last Business Day of such calendar month, (D) there shall not be more than four (4) Interest Periods outstanding at any one (1) time.

"Investment Company Act" shall mean the Investment Company Act of 1940, as amended, together with the rules and regulations promulgated thereunder.

"Joinder Agreement" shall mean a joinder agreement, in the form of EXHIBIT J to the Participation Agreement, executed from time to time between a Domestic Subsidiary of any Credit Party and Bank.

"Land" shall mean a parcel of real property described on (a) the Requisition issued by the Construction Agent on the Property Closing Date relating to such parcel and (b) the schedule to each applicable Lease Supplement executed and delivered in accordance with the requirements of Section 2.4 of the Lease.

"Land Cost" shall have the meaning specified in Section 5.4 of the Agency Agreement.

"Law" shall mean any statute, law, ordinance, regulation, rule, directive, order, writ, injunction or decree of any Tribunal.

"Lease" or "Lease Agreement" shall mean the Lease Agreement dated on or about the Initial Closing Date, between the Lessor and the Lessee, together with any Lease Supplements thereto.

"Lease Default" shall mean any event or condition which, with the lapse of time or the giving of notice, or both, would constitute a Lease Event of Default.

"Lease Event of Default" shall have the meaning specified in Section 17.1 of the Lease.

"Lease Supplement" shall mean each Lease Supplement substantially in the form of Exhibit A to the Lease, together with all attachments and schedules thereto.

"Legal Requirements" shall mean all foreign, federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Owner Trustee, the Lessor, the Lessee, the Bank or any Property, Land, Improvement, Equipment or the taxation, demolition, construction, use or alteration of such Improvements, whether now or hereafter enacted and in force, including without limitation any that require repairs, modifications or alterations in or to any Property or in any way limit the use and enjoyment thereof (including without limitation all building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. ss. 12101 et. seq., and any other similar

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federal, state or local laws or ordinances and the regulations promulgated thereunder) and any that may relate to environmental requirements (including without limitation all Environmental Laws), and all permits, certificates of occupancy, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments which are either of record or known to the Lessee affecting any Property or the Appurtenant Rights.

"Lender Commitment" shall mean \$17,460,000, as such amount may be increased or reduced from time to time in accordance with the provisions of the Operative Agreements.

"Lender Financing Statements" shall mean UCC financing statements and fixture filings appropriately completed and executed for filing in the applicable jurisdiction in order to procure a security interest in favor of the Bank in the Collateral subject to the Security Documents.

"Lender" shall mean the Bank as lender under the Participation Agreement and the Credit Agreement.

"Lessee" shall have the meaning set forth in the Lease.

"Lessee Credit Agreement" shall mean that certain Amended and Restated Revolving Credit Agreement dated as of September 27, 1996 among the Lessee as the borrower, Dollar Tree Stores, Inc. and Dollar Tree Management, Inc., as guarantors, The First National Bank of Boston, NationsBank, N.A., Signet Bank, Crestar Bank, First Union National Bank of Virginia, Amsouth Bank of Alabama, Union Bank of California, N.A., and all other financial institutions which are parties thereto from time to time, as lenders, and The First National Bank of Boston, as agent, as such is amended, modified, supplemented, restated and/or replaced from time to time.

"Lessee Credit Agreement Event of Default" shall mean an Event of Default as defined in Section 12 of the Lessee Credit Agreement.

"Lessor" shall mean the Owner Trustee, not in its individual capacity, but as the Lessor under the Lease.

"Lessor Basic Rent" shall mean the scheduled Holder Yield due on the Holder Advances on any Scheduled Interest Payment Date pursuant to the Trust Agreement (but not including interest on (a) any such scheduled Holder Yield due on the Holder Advances prior to the Rent Commencement Date with respect to the Property to which such Holder Advances relate or (b) overdue amounts under the Trust Agreement or otherwise).

"Lessor Financing Statements" shall mean UCC financing statements and fixture filings appropriately completed and executed for filing in the applicable jurisdictions in order to protect the Lessor's interest under the Lease to the extent the Lease is a security agreement or a mortgage.

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"Lessor Lien" shall mean any Lien, true lease or sublease or disposition of title arising as a result of (a) any claim against the Lessor or the Trust Company, in its individual capacity, not resulting from the transactions contemplated by the Operative Agreements, (b) any act or omission of the Lessor or the Trust Company, in its individual capacity, which is not required by the Operative Agreements or is in violation of any of the terms of the Operative Agreements, (c) any claim against the Lessor or the Trust Company, in its individual capacity, with respect to Taxes or Transaction Expenses against which the Lessee is not required to indemnify the Lessor or the Trust Company, in its individual capacity, pursuant to Section 11 of the Participation Agreement or (d) any claim against the Lessor arising out of any transfer by the Lessor of all or any portion of the interest of the Lessor in the Properties, the Trust Estate or the Operative Agreements other than the transfer of title to or possession of any Properties by the Lessor pursuant to and in accordance with the Lease, the Credit Agreement, the Security Agreement or the Participation Agreement or pursuant to the exercise of the remedies set forth in Article XVII

of the Lease.

"Lien" shall mean any mortgage, pledge, security interest, encumbrance, lien, option or charge of any kind.

"Limited Recourse Amount" shall mean with respect to all the Properties on an aggregate basis, an amount equal to the sum of the Termination Values with respect to all the Properties on an aggregate basis on each Payment Date, less the Maximum Residual Guarantee Amount as of such date with respect to all the Properties on an aggregate basis.

"Loan Basic Rent" shall mean the scheduled interest due on the Loans on any Scheduled Interest Payment Date pursuant to the Credit Agreement (but not including interest on (a) any such Loan due prior to the Rent Commencement Date with respect to the Property to which such Loan relates or (b) any overdue amounts under Section 2.8(b) of the Credit Agreement or otherwise).

"Loan Property Cost" shall mean, with respect to each Property at any date of determination, an amount equal to (a) the aggregate principal amount all Loans (including without limitation all Acquisition Loans and Construction Loans) made on or prior to such date with respect to such Property minus (b) the aggregate amount of prepayments or repayments as the case may be of the Loans allocated to reduce the Loan Property Cost of such Property pursuant to Section 2.6(c) of the Credit Agreement.

"Loans" shall mean the loans extended pursuant to the Credit Agreement.

"Marketing Period" shall mean, if the Lessee has given a Sale Notice in accordance with Section 20.1 of the Lease, the period commencing on the date such Sale Notice is given and ending on the Expiration Date.

"Margin Certificate" shall have the meaning given to such term in Section 8.3(k) of the Participation Agreement.

#### Appendix-21

"Material Adverse Effect" shall, mean a material adverse effect on (a) the business, condition (financial or otherwise), assets, liabilities or operations of the Lessee and the other Credit Parties, taken as a whole, (b) the ability of the Lessee to perform its respective obligations under any Operative Agreement to which it is a party, (c) the validity or enforceability of any Operative Agreement or the rights and remedies of the Bank or the Lessor thereunder, (d) the validity, priority or enforceability of any Lien on any Property created by any of the Operative Agreements, or (e) the value, utility or useful life of any Property or the use, or ability of the Lessee to use, any Property for the purpose for which it was intended.

"Maturity Date" shall mean the Expiration Date.

"Maximum Residual Guarantee Amount" shall mean an amount equal to the product of the aggregate Property Cost for all of Properties times eighty-five percent (85%).

"Modifications" shall have the meaning specified in Section 11.1(a) of the Lease.

"Mortgage Instrument" shall mean any mortgage, deed of trust or any other instrument executed by the Owner Trustee and the Lessee (or regarding any Property subject to a Ground Lease, the applicable Affiliate of the Lessee) in favor of the Bank) and evidencing a Lien on the Property, in form and substance reasonably acceptable to the Bank.

"Multiemployer Plan" shall mean any plan described in Section 4001(a)(3) of ERISA to which contributions are or have been made or required by the Lessee or any of its Subsidiaries or ERISA Affiliates.

"Multiple Employer Plan" shall mean a plan to which the Lessee or any ERISA Affiliate and at least one (1) other employer other than an ERISA Affiliate is making or accruing an obligation to make, or has made or accrued an obligation to make, contributions.

"New Facility" shall have the meaning given to such term in Section 28.1 of the Lease.

"Notes" shall mean those notes issued to the Bank pursuant to the Credit Agreement.

"Obligations" shall have the meaning given to such term in Section 1 of the Security Agreement.

"Officer's Certificate" with respect to any person shall mean a certificate executed on behalf of such person by a Responsible Officer who has made or caused to be made such examination or investigation as is necessary to

enable such Responsible Officer to express an informed opinion with respect to the subject matter of such Officer's Certificate.

"Officer's Compliance Certificate" shall have the meaning given to such term in Section 8.3(k) of the Participation Agreement.

#### Appendix-22

"Operative Agreements" shall mean the following: the Participation Agreement, the Agency Agreement, the Trust Agreement, the Certificates, the Credit Agreement, the Notes, the Lease, the Lease Supplements (and memoranda of the Lease and each Lease Supplement in a form reasonably acceptable to the Agent), the Security Agreement, the Mortgage Instruments, the other Security Documents, the Ground Leases, the Deeds and the Bills of Sale and any and all other agreements, documents and instruments executed in connection with any of the foregoing.

"Original Executed Counterpart" shall have the meaning given to such term in Section 5 of EXHIBIT A to the Lease.

"Overdue Interest" shall mean any interest payable pursuant to Section 2.8(b) of the Credit Agreement.

"Overdue Rate" shall mean (a) with respect to the Loan Basic Rent, and any other amount owed under or with respect to the Credit Agreement or the Security Documents, the rate specified in Section 2.8(b) of the Credit Agreement, (b) with respect to the Lessor Basic Rent, the Holder Yield and any other amount owed under or with respect to the Trust Agreement, the Holder Overdue Rate, and (c) with respect to any other amount, the amount referred to in clause (y) of Section 2.8(b) of the Credit Agreement.

"Owner Trustee," "Borrower" or "Lessor" shall mean First Security Bank, National Association, not individually, except as expressly stated in the various Operative Agreements, but solely as the Owner Trustee under the DTSD Realty Trust 1999-1, and any successor, replacement and/or additional Owner Trustee expressly permitted under the Operative Agreements.

"Participation Agreement" shall mean the Participation Agreement dated on or about the Initial Closing Date, among the Lessee, the Guarantors, the Owner Trustee, not in its individual capacity except as expressly stated therein, and the Bank.

"Payment Date" shall mean any Scheduled Interest Payment Date and any date on which interest or Holder Yield in connection with a prepayment of principal on the Loans or of the Holder Advances is due under the Credit Agreement or the Trust Agreement.

"PBGC" shall mean the Pension Benefit Guaranty Corporation created by Section 4002(a) of ERISA or any successor thereto.

"Pension Plan" shall mean a "pension plan", as such term is defined in section 3(2) of ERISA, which is subject to title IV of ERISA (other than a Multiemployer Plan), and to which the Lessee or any ERISA Affiliate may have any liability, including without limitation any liability by reason of having been a substantial employer within the meaning of section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under section 4069 of ERISA.

"Permitted Facility" shall mean a Property approved by the Bank.

#### Appendix-23

"Permitted Liens" shall mean:

(a) the respective rights and interests of the parties to the Operative Agreements as provided in the Operative Agreements;

(b) the rights of any sublessee or assignee under a sublease or an assignment expressly permitted by the terms of the Lease for no longer than the duration of the Lease;

(c) Liens for Taxes that either are not yet due or are being contested in accordance with the provisions of Section 13.1 of the Lease;

(d) Liens arising by operation of law, materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's and other like Liens relating to the construction of the Improvements or in connection with any Modifications or arising in the ordinary course of business for amounts that either are not more than thirty (30) days past due or are being diligently contested in good

faith by appropriate proceedings, so long as such proceedings satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease;

(e) Liens of any of the types referred to in clause (d) above that have been bonded for not less than the full amount in dispute (or as to which other security arrangements satisfactory to the Lessor and the Bank have been made), which bonding (or arrangements) shall comply with applicable Legal Requirements, and shall have effectively stayed any execution or enforcement of such Liens;

(f) Liens arising out of judgments or awards with respect to which appeals or other proceedings for review are being prosecuted in good faith and for the payment of which adequate reserves have been provided as required by GAAP or other appropriate provisions have been made, so long as such proceedings have the effect of staying the execution of such judgments or awards and satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease; and

(g) Liens in favor of municipalities to the extent agreed to by the Lessor.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, governmental authority or any other entity.

"Plans and Specifications" shall mean, with respect to Improvements, the plans and specifications for such Improvements to be constructed or already existing, as such Plans and Specifications may be amended, modified or supplemented from time to time in accordance with the terms of the Operative Agreements.

#### Appendix-24

"Prime Lending Rate" shall have the meaning given to such term in the definition of ABR.

"Property" shall mean, with respect to each Permitted Facility that is (or is to be) acquired, constructed and/or renovated pursuant to the terms of the Operative Agreements, the Land and each item of Equipment and the various Improvements, in each case located on such Land, including without limitation each Construction Period Property, each Property subject to a Ground Lease and each Property for which the Term has commenced.

"Property Acquisition Cost" shall mean the cost to the Lessor to purchase a Property on a Property Closing Date.

"Property Closing Date" shall mean the date on which the Lessor purchases a Property or, with respect to the first Advance, the date on which the Lessor seeks reimbursement for Property previously purchased by the Lessor.

"Property Cost" shall mean with respect to a Property the aggregate amount (and/or the various items and occurrences giving rise to such amounts) of the Loan Property Cost plus the Holder Property Cost for such Property (as such amounts shall be increased equally among all Properties respecting the Holder Advances and the Loans extended from time to time to pay for the Transaction Expenses, fees, expenses and other disbursements referenced in Section 7.1 of the Participation Agreement).

"Purchase Option" shall have the meaning given to such term in Section 20.1 of the Lease.

"Purchasing Lender" shall have the meaning given to such term in Section 9.8(a) of the Credit Agreement.

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

"Release" shall mean any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance.

"Rent" shall mean, collectively, the Basic Rent and the Supplemental Rent, in each case payable under the Lease.

"Rent Commencement Date" shall mean, regarding each Property, the Completion Date.

"Reportable Event" shall have the meaning specified in ERISA.



"Requested Funds" shall mean any funds requested by the Lessee or the Construction Agent, as applicable, in accordance with Section 5 of the Participation Agreement.

"Requisition" shall have the meaning specified in Section 4.2 of the Participation Agreement.

"Responsible Officer" shall mean the Chairman or Vice Chairman of the Board of Directors, the Chairman or Vice Chairman of the Executive Committee of the Board of Directors, the President, any Senior Vice President or Executive Vice President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, or any Assistant Treasurer, except that when used with respect to the Trust Company or the Owner Trustee, "Responsible Officer" shall also include the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, the Controller and any Assistant Controller or any other officer of the Trust Company or the Owner Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Sale Date" shall have the meaning given to such term in Section 20.3(a) of the Lease.

"Sale Notice" shall mean a notice given to the Lessor in connection with the election by the Lessee of its Sale Option.

"Sale Option" shall have the meaning given to such term in Section 20.1 of the Lease.

"Sale Proceeds Shortfall" shall mean the amount by which the proceeds of a sale described in Section 22.1 of the Lease are less than the Limited Recourse Amount with respect to the Properties if it has been determined that the Fair Market Sales Value of the Properties at the expiration of the term of the Lease has been impaired by greater than ordinary wear and tear during the Term of the Lease.

"Scheduled Interest Payment Date" shall mean (a) as to any Eurodollar Loan or Eurodollar Holder Advance, the last day of the Interest Period applicable to such Eurodollar Loan or Eurodollar Holder Advance (or respecting any Eurodollar Loan or Eurodollar Holder Advance having an Interest Period of six (6) months, each three (3) month anniversary of such Loan or Holder Advance), (b) as to any ABR Loan or any ABR Holder Advance, the fifteenth day of each month, unless such day is not a Business Day and in such case on the next occurring Business Day and (c) as to all Loans and Holder Advances, the date of any voluntary or involuntary payment, prepayment, return or redemption, and the Maturity Date or the Expiration Date, as the case may be.

"Securities Act" shall mean the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"Security Agreement" shall mean the Security Agreement dated on or about the Initial Closing Date between the Lessor and the Bank.

"Security Documents" shall mean the collective reference to the Security Agreement, the Mortgage Instruments, (to the extent the Lease is construed as a security instrument) the Lease, the UCC Financing Statements and all other security documents hereafter delivered to the Bank granting a lien on any asset or assets of any Person to secure the obligations and liabilities of the Lessor under the Credit Agreement and/or under any of the other Credit Documents or to secure any guarantee of any such obligations and liabilities.

"Soft Costs" shall mean all costs which are ordinarily and reasonably incurred in relation to the acquisition, development, installation, construction, improvement and testing of the Properties other than Hard Costs, including without limitation structuring fees, administrative fees, legal fees, upfront fees, fees and expenses related to appraisals, title examinations, title insurance, document recordation, surveys, environmental site assessments, geotechnical soil investigations and similar costs and professional fees customarily associated with a real estate closing, the Commitment Fee, fees and expenses of the Owner Trustee payable or reimbursable under the Operative Agreements and costs and expenses incurred pursuant to Section 7 of the Participation Agreement.

"Subsidiary" shall mean, as to any Person, any corporation of which at least a majority of the outstanding stock having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation

(irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person, or by one (1) or more Subsidiaries, or by such Person and one (1) or more Subsidiaries.

"Supplemental Amounts" shall have the meaning given to such term in Section 9.18 of the Credit Agreement.

"Supplemental Rent" shall mean all amounts, liabilities and obligations (other than Basic Rent) which the Lessee assumes or agrees to pay to the Lessor, the Trust Company, the Bank or any other Person under the Lease or under any of the other Operative Agreements including without limitation payments of the Termination Value and the Maximum Residual Guarantee Amount and all indemnification amounts, liabilities and obligations.

"Taxes" shall have the meaning specified in the definition of "Impositions".

"Term" shall have the meaning specified in Section 2.2 of the Lease.

"Termination Date" shall have the meaning specified in Section 16.2(a) of the Lease.

"Termination Event" shall mean (a) with respect to any Pension Plan, the occurrence of a Reportable Event or an event described in Section 4062(e) of ERISA, (b) the withdrawal of the Lessee or any ERISA Affiliate from a Multiple Employer Plan during a plan year in which it was

#### Appendix-27

a substantial employer (as such term is defined in Section 4001(a)(2) of ERISA), or the termination of a Multiple Employer Plan, (c) the distribution of a notice of intent to terminate a Plan or Multiemployer Plan pursuant to Section 4041(a)(2) or 4041A of ERISA, (d) the institution of proceedings to terminate a Plan or Multiemployer Plan by the PBGC under Section 4042 of ERISA, (e) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan, or (f) the complete or partial withdrawal of the Lessee or any ERISA Affiliate from a Multiemployer Plan.

"Termination Notice" shall have the meaning specified in Section 16.1 of the Lease.

"Termination Value" shall mean the sum of (a) either (i) with respect to all Properties, an amount equal to the aggregate outstanding Property Cost for all the Properties, in each case as of the last occurring Payment Date, or (ii) with respect to a particular Property, an amount equal to the Property Cost allocable to such Property, plus (b) respecting the amounts described in each of the foregoing subclause (i) or (ii), as applicable, any and all accrued but unpaid interest on the Loans and any and all Holder Yield on the Holder Advances related to the applicable Property Cost, plus (c) to the extent the same is not duplicative of the amounts payable under clause (b) above, all other Rent and other amounts then due and payable or accrued under the Agency Agreement, Lease and/or under any other Operative Agreement (including without limitation amounts under Sections 11.1 and 11.2 of the Participation Agreement and all costs and expenses referred to in clause FIRST of Section 22.2 of the Lease).

"Transaction Expenses" shall mean all Soft Costs and all other costs and expenses incurred in connection with the preparation, execution and delivery of the Operative Agreements and the transactions contemplated by the Operative Agreements including without limitation all of the following:

(a) the reasonable fees, out-of-pocket expenses and disbursements of counsel in negotiating the terms of the Operative Agreements and the other transaction documents, preparing for the closings under, and rendering opinions in connection with, such transactions and in rendering other services customary for counsel representing parties to transactions of the types involved in the transactions contemplated by the Operative Agreements;

(b) the reasonable fees, out-of-pocket expenses and disbursements of accountants for the Lessee in connection with the transaction contemplated by the Operative Agreements;

(c) any and all other reasonable fees, charges or other amounts payable to the Bank, the Owner Trustee or any broker which arises under any of the Operative Agreements;

(d) any other reasonable fee, out-of-pocket expenses, disbursement or cost of any party to the Operative Agreements or any of the other transaction documents; and

(e) any and all Taxes and fees incurred in recording or filing any Operative Agreement or any other transaction document, any deed, declaration, mortgage, security agreement, notice or financing statement with any public office, registry or governmental agency in connection with the transactions contemplated by the Operative Agreement.

"Tribunal" shall mean any state, commonwealth, federal, foreign, territorial, or other court or government body, subdivision agency, department, commission, board, bureau or instrumentality of a governmental body.

"Trust" shall mean the DTSD Realty Trust 1999-1.

"Trust Agreement" shall mean the Amended, Restated and Replacement Trust Agreement dated on or about the Initial Closing Date between the Bank and the Owner Trustee.

"Trust Company" shall mean First Security Bank, National Association, in its individual capacity, and any successor owner trustee under the Trust Agreement in its individual capacity.

"Trust Estate" shall have the meaning specified in Section 2.2 of the Trust Agreement.

"Type" shall mean, as to any Loan, whether it is an ABR Loan or a Eurodollar Loan.

"UCC Financing Statements" shall mean collectively the Lender Financing Statements and the Lessor Financing Statements.

"Unfunded Amount" shall have the meaning specified in Section 3.2 of the Agency Agreement.

"Unfunded Liability" shall mean, with respect to any Plan, at any time, the amount (if any) by which (a) the present value of all benefits under such Plan exceeds (b) the fair market value of all Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of the Company or any member of the Controlled Group to the PBGC or such Plan under Title IV of ERISA.

"Uniform Commercial Code" and "UCC" shall mean the Uniform Commercial Code as in effect in any applicable jurisdiction.

"United States Bankruptcy Code" shall mean Title 11 of the United States Code.

"U.S. Taxes" shall have the meaning specified in Section 11.2(e) of the Participation Agreement.

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"Withholdings" shall have the meaning specified in Section 11.2(e) of the Participation Agreement.

"Work" shall mean the furnishing of labor, materials, components, furniture, furnishings, fixtures, appliances, machinery, equipment, tools, power, water, fuel, lubricants, supplies, goods and/or services with respect to any Property.

"Year 2000" shall mean the calendar year beginning January 1, 2000 and ending December 31, 2000.

#### Appendix-30

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THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION FROM THE COMPANY'S FORM 10-Q FOR THE PERIOD ENDED JUNE 30, 1999 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS. THE FINANCIAL DATA SCHEDULE FOR JUNE 30, 1998 IS RESTATED TO GIVE EFFECT TO THE POOLING-OF-INTERESTS MERGERS WITH STEP AHEAD INVESTMENTS, INC. AND TEHAN'S MERCHANDISING, INC.

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