

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

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

For the fiscal year ended February 3, 2002 Commission File No. 0-25858

DAVE & BUSTER'S, INC.

(Exact name of registrant as specified in its charter)

Missouri 43-1532756
(State or other jurisdiction of (I.R.S. employer
incorporation or organization) identification number)

2481 Manana Drive, Dallas, Texas 75220
(Address of principal executive offices) (Zip Code)

Registrant's telephone number,
Including area code (214) 357-9588

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

Title of Each Class

Common Stock, \$0.01 par value

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

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

Yes X No
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Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulations S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

The aggregate market value of the voting stock held by non-affiliates of registrant at April 17, 2002 was \$121,999,320.

The number of shares of common stock outstanding at April 17, 2002 was 13,266,641 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for its annual meeting of Stockholders on June 11, 2002, are incorporated by reference into Part III hereof, to the extent indicated herein.

PART I

Item 1. BUSINESS

General

Dave & Buster's, Inc. (the "Company") operates large format, high-volume Restaurant/Entertainment Complexes ("Complexes" or "Stores") under the Dave & Buster's name. Each Dave & Buster's Complex offers a full menu of high quality food and beverage items combined

with an extensive array of entertainment attractions such as pocket billiards, shuffleboard, state-of-the-art interactive simulators and virtual reality systems, and traditional carnival-style games of skill. The Company's large format is designed to promote easy access to, and maximize customer crossover between, the multiple dining and entertainment areas within each Complex. The Company emphasizes high levels of customer service to create casual, yet sophisticated, "ideal playing conditions" for adults. As of February 3, 2002, the Company had 31 stores across the United States. Additionally, the Company licenses the Dave & Buster's concept internationally through area licensing agreements and as of February 3, 2002, there were two Dave & Buster's in operation outside the United States.

The Dave & Buster's Concept

The Company seeks to differentiate itself by providing high quality dining, bar service, and entertainment attractions in a comfortable, adult atmosphere. The key factors of the Company's market positioning and operating strategy are:

Distinctive Concept. Each Dave & Buster's offers a distinctive combination of dining, bar service and entertainment. A full menu and complete bar service are available from early lunch until late night in each restaurant and throughout almost all of the entertainment areas. The broad array of attractions, ranging from table and carnival games to state-of-the-art virtual reality games, is continuously reviewed and updated to maintain a fresh entertainment environment. The Company also actively seeks to enhance the popularity of its traditional games, such as pocket billiards and shuffleboard, by providing high quality tables, a clean and comfortable environment and a high standard of service.

A Large, Multiple Attraction Destination. The Complexes range in approximate total area from 31,000 square feet to 70,000 square feet. The large scale of each operation, together with the numerous food, beverage and entertainment options offered, is designed to attract a diverse customer base and consolidate multiple-destination customer spending into one location. Each Dave & Buster's attracts local customers from a wide geographical area (estimated to be a twenty-mile radius) along with tourists, conventioners and business travelers.

Commitment to Quality. The Company strives to provide its customers with good food and an inviting atmosphere. Accordingly, each Dave & Buster's offers an extensive menu which features popular, moderately priced food and beverage items that are individually prepared with a commitment to value and quality. The Company makes a significant investment in each Complex, and the Company's facilities are designed with an attention to detail. In addition, the customer-participation entertainment attractions are tastefully presented in an atmosphere that the Company defines as "ideal playing conditions".

2

High Standard of Customer Service. Through intensive personnel training, constant monitoring of operations and stringent operational controls, the Company strives to maintain a consistently high standard of food, beverage, and amusement service throughout each Complex. The Company's commitment to customer service is evidenced by the availability of full food and beverage service in entertainment areas as well as the restaurant and bar areas.

With respect to entertainment, the Company's commitment to customer service is demonstrated by service staff in each of the entertainment areas who offer assistance in playing and enjoying the games. The Company believes its customer service is enhanced by a strong commitment to employee motivation and appreciation programs. The Company also believes that high service standards are critical to promoting customer loyalty and to generating frequent visiting patterns and referrals by customers.

Comfortable Adult Atmosphere. Each Dave & Buster's is primarily adult oriented and, while children are welcome, strict guidelines are enforced. Customers under twenty-one years of age must be accompanied

by a parent or guardian (a person 25 years of age or older who agrees to be responsible for the conduct and safety of the underage guest) at all times during their visit and are not allowed in a Dave & Buster's after 10:00 p.m. (11:00 p.m. in the summer months). The Company believes that these policies help maintain the type of pleasant, relaxed atmosphere that appeals to adult customers. The Company also believes that this atmosphere attracts groups of customers such as private parties and business organizations.

Integrated Systems. The Company utilizes centralized information and accounting systems that are designed to allow its management to efficiently monitor labor, food, and other direct operating expenses, and to provide timely access to financial and operating data. Management believes that its integrated computer systems permit it, on both an overall and per Complex basis, to efficiently operate the Restaurant/Entertainment Complexes.

Attractive Venue for Special Events. Each Dave & Buster's offers Special Events Planning for companies and private individuals. The varied menu and many amusement opportunities make Dave & Buster's attractive locations for groups of between 10 and 2,000. In addition, most Dave & Buster's include a Show Room with a stage, audiovisual capability and private refreshment area. Dave & Buster's has developed innovative packages that combine food, beverage and entertainment components and markets these to groups and individuals.

Restaurant/Entertainment Concept and Menu

Dave & Buster's offers a full menu of high quality food and beverage items combined with an extensive array of entertainment attractions such as pocket billiards, shuffleboard, state-of-the-art interactive simulators and virtual reality systems, and traditional carnival-style games of skill. The Company's facilities are designed to promote easy access to, and maximize customer crossover between, the multiple dining and entertainment areas within each Complex. The Company emphasizes high levels of customer service to create casual, yet sophisticated, "ideal playing conditions" for adults.

The Dave & Buster's menu is offered from early lunch until late night and features moderately priced food designed to appeal to a wide variety of customers. This well-rounded fare includes gourmet pastas, burgers, steaks, seafood, chicken and an outstanding selection of desserts. The menu is updated to reflect current trends and guest favorites. It places special emphasis on quality products such as the Nebraska Corn Fed Beef program. All steaks and burgers are produced under these guidelines, which insures a consistently superior product. Other items

among our guests' favorites are the Classic BBQ Ribs, the Philly Cheesesteak sandwich, Chicken Scallopini and our Grilled Mahi-Mahi. We also feature lunch specials with an emphasis on quality food done quickly. Sunday brunch in selected locations, and an extensive offering of buffets for special events and private parties.

In order to promote customer flow and complement the entertainment areas, full, sit-down food service is offered not only in the restaurant areas, but throughout the entire Complex. In addition, throughout the restaurant and entertainment areas each Dave & Buster's offers full bar service including over 50 different beers, an extensive wine selection, and a variety of non-alcoholic beverages such as its own private label, "D&B Old Fashioned Philly Root Beer".

The entertainment attractions in each Dave & Buster's are geared toward customer participation and offer both traditional entertainment and "Million Dollar Midway" entertainment.

Traditional Entertainment. Each Dave & Buster's offers a number of traditional entertainment options. These traditional offerings include "world class" pocket billiards, "championship-style" shuffleboard tables, and the Show Room or other special event rooms which are

designed for hosting private social parties and business gatherings as well as Company sponsored events. Traditional entertainment games are rented by the hour.

Million Dollar Midway Games. The largest area in each Dave & Buster's is the Million Dollar Midway which is designed to provide high-energy, escapism entertainment through a broad selection of electronic, skill and sports-oriented games. The Dave & Buster's Power Card activates all the midway games (with the exception of coin action games) and can be recharged for additional play. The Power Card enables customers to activate games more easily and encourages extended play of games. By replacing coin activation, the Power Card has eliminated the technical difficulties and maintenance issues associated with coin activated equipment. Furthermore, the Power Card feature has increased the Company's flexibility in pricing and promoting of games.

Attractions within the Million Dollar Midway include fantasy/high technology and classic midway entertainment. Fantasy/high-technology offerings include simulator games such as formula race cars, off-road vehicles, fighter jets and motorcycles; Galaxian Theater, a multi-participant, enclosed simulation theater where up to six players take part in mock battles with alien invaders; Virtuality, an interactive, electronic game designed to simulate an actual battlefield environment; Virtual World, a fantasy environment attraction; Iwerks Turbo Ride Theater, a 16 to 18 seat motion simulation theater; large-screen interactive electronic games; and "The 19th Hole", a state-of-the-art golf simulator. The Company also contracts for exclusive games designed to build customer loyalty and repeat customer visits.

Classic midway entertainment includes sports-oriented games of skill, carnival-style games, which are intended to replicate the atmosphere found in many local county fairs, and D&B Downs which is one of several multiple-player race games offered in each Dave & Buster's. At the Winner's Circle, players can redeem coupons won from selected games of skill for a wide variety of prizes, many of which display the Dave & Buster's logo. The prizes include stuffed animals, clothing, and small electronic and novelty items.

Locations

As of February 3, 2002, the Company operates the following 31 Complexes located in 14 states:

Location -----	State -----	Approximate Square Footage -----	Owned or Leased -----
Dallas (I)	TX	40,000	Owned
Dallas (II)	TX	31,000	Leased
Houston	TX	53,000	Leased
Atlanta (I)	GA	53,000	Leased
Philadelphia	PA	70,000	Leased
Chicago (I)	IL	50,000	Owned
Chicago (II)	IL	55,000	Leased
Hollywood	FL	58,000	Leased
North Bethesda	MD	58,000	Leased
Ontario	CA	59,000	Leased
Cincinnati	OH	64,000	Leased
Denver	CO	48,000	Leased
Utica (suburban Detroit)	MI	56,000	Leased
Irvine	CA	55,000	Leased
Rockland County/West Nyack	NY	48,000	Leased
Orange	CA	58,000	Leased
Columbus	OH	37,500	Owned
San Antonio	TX	52,000	Leased
Atlanta (II)	GA	58,000	Leased
St. Louis	MO	57,000	Leased
Austin	TX	40,000	Leased

Jacksonville	FL	40,500	Owned
Providence	RI	40,500	Leased
Milpitas (San Jose)	CA	60,000	Leased
Westminster (Denver)	CO	40,000	Leased
Pittsburgh	PA	60,000	Leased
San Diego	CA	48,000	Leased
Miami	FL	59,500	Leased
Frisco	TX	50,000	Leased
Honolulu	HI	44,000	Leased
Cleveland	OH	57,500	Leased

Business Development

The Company continually seeks to identify and evaluate new locations for expansion. The Company signed a 20-year lease for a Complex due to open in fiscal 2002 on Long Island, New York and signed a 20-year lease for a Complex scheduled to open in fiscal 2004 in Ft. Worth, Texas.

The Company believes that the location of its Complexes is critical to the Company's long-term success. Significant time and resources are devoted to analyzing each prospective site. In

5

general, the Company targets high-profile sites within metropolitan areas of less than one million people for intermediate-size models and at least one million people for mega-size models. The Company carefully analyzes demographic information (such as average income levels) for each prospective site, the Company considers factors such as visibility; accessibility to regional highway systems; zoning; regulatory restrictions; and proximity to shopping areas, office complexes, tourist attractions and residential areas. The Company also carefully studies the restaurant and entertainment competition in prospective areas. In addition, the Company must select a site of sufficient size to accommodate its prototype facility with ample, convenient customer parking.

The typical cost of opening a mega-size Dave & Buster's ranges from approximately \$7.5 million to \$13.0 million (excluding preopening expenses and developer allowances), depending upon the location and condition of the premises. For intermediate-size models, the typical cost ranges from approximately \$6.5 million and \$12.5 million (excluding pre-opening expenses and developer allowances), depending upon the location and condition of the premises. The Company will base the decision of owning or leasing a site on the projected unit economics and availability of the site for purchase. The Complexes opened in 2001 are all leased facilities. Opening a leased facility reduces the Company's capital investment in a Complex because the Company does not incur land and site improvement costs and may also receive a construction allowance from the landlord for improvements. The exterior and interior layout of a Dave & Buster's is flexible and can be readily adapted to different types of buildings. The Company opens Complexes in both new and existing structures, in both urban and suburban areas.

International

To facilitate international expansion, the Company has elected to pursue territorial development and franchise agreements with independent franchisees located in various countries outside of the United States. Under such agreements, the Company will license the Dave & Buster's name and concept for a specified territory in exchange for an initial development fee and a commitment to develop a minimum number of Complexes. A typical Dave & Buster's development agreement requires the developer/franchisee to construct and open 5-7 new Complexes in a specified geographic area over a several year period. Once a site is identified and approved, the area developer enters into a separate license agreement for the individual property and agrees to pay an initial license fee and continuing royalties to the Company based on the gross revenues of that location. Each license agreement also contains strict operating covenants to promote the consistency of the menu and entertainment offerings with those of Company-operated

Complexes. In exchange, the Company provides certain proprietary materials and supervisory services to help ensure the quality of the Dave & Buster's concept. All costs of building, opening and operating the licensed Complexes are borne by the franchisees.

In October 2001, the Company entered into a development agreement with TEP Incorporated (TEP) to license the "Dave & Buster's" name and concept in Korea. Under the agreement, TEP has agreed to open five Complexes by the year 2009. The license agreement contains strict operating covenants to ensure consistency of the menu and entertainment offerings with those in the Company operated Complexes.

In September 2000, the Company entered into a development agreement with Grupo Ildomani S. de R.L. de C.V., limited liability company ("Grupo Ildomani") to license the "Dave & Buster's" name and concept in Mexico. Under this agreement, Grupo Ildomani has agreed to open five Complexes by the year 2006. The license agreement contains strict operating covenants to ensure consistency of the menu and entertainment offerings with those in the Company operated Complexes.

6

In July 2000, the Company entered into a development agreement with Al-Mal Entertainment Enterprises, K.C.S. ("Al-Mal") to license the "Dave & Buster's" name and concept in the Middle East. Under this agreement, Al-Mal has agreed to open six Complexes by the year 2009. The license agreement contains strict operating covenants to ensure consistency of the menu and entertainment offerings with those in the Company operated Complexes.

In March 1999, the Company entered into a development agreement with Funtime Hospitality Corp. ("Funtime") to license the "Dave & Buster's" name and concept in Canada. Under this agreement, Funtime opened a Complex in Toronto, Ontario in June 2000, and has agreed to open four additional Complexes by the year 2005. The license agreement contains strict operating covenants to ensure consistency of the menu and entertainment offerings with those in the Company operated Complexes.

In February 1998, the Company entered into a development agreement with the TaiMall Development Company ("TaiMall") to license the "Dave & Buster's" name and concept in the Pacific Rim. Under this agreement, TaiMall opened a Complex in Taipei, Taiwan in December 1999, and has agreed to open six additional Complexes in the Pacific Rim by the year 2006. The license agreement contains strict operating covenants to ensure consistency of the menu and entertainment offerings with those in the Company operated Complexes.

In August 1995, the Company entered into a development agreement with a subsidiary of Bass Plc ("Bass") to license the "Dave & Buster's" name and concept in the United Kingdom. In October 2000, Bass terminated this agreement for internal operating reasons and closed the two United Kingdom Dave & Buster's locations. In September 1998, the Company entered into a license agreement with the SVAG Development Corporation ("SVAG") to license the "Dave & Buster's" name and concept in Germany, Switzerland and Austria. In March 2001, SVAG terminated this agreement due to lack of financing.

The Company will continue to consider opportunities to license the "Dave & Buster's" name and concept to qualified parties in additional foreign countries. The Company does not have any current plans to invest its own capital in any foreign operations.

There can be no assurance that these development agreements will be completed by the licensees.

Operations and Management

The Company's ability to manage a complex operation, that includes both high volume restaurants, bars and diverse entertainment attractions, is critical to its overall success. The Company strives to maintain quality and consistency in each of its Complexes through careful training and supervision of personnel and the establishing and adhering

to high standards relating to personnel performance, food and beverage preparation, entertainment productions and equipment, and facilities maintenance. The Company believes that it is able to attract and retain high quality, experienced restaurant and entertainment management and personnel through its competitive compensation and bonus programs and its policy of promoting principally from within the Company. Staffing levels vary according to the size of the location, but a mega-size Dave & Buster's is managed by one general manager, two assistant general managers, seven line managers and one business manager.

In general, each mega-size Dave & Buster's also employs one purchasing agent, one amusement manager, one assistant amusement manager, one kitchen manager, one or two assistant kitchen managers, and one special events sales manager. On average, the Company's current general

7

managers possess approximately four years of experience with the Company. The general manager of each Dave & Buster's reports to a Regional Operations Director who reports to the Vice President, Director of Operations.

All managers, many of whom are promoted from within, must complete an eleven-week training program during which they are instructed in areas such as food quality and preparation, customer service, alcoholic beverage service, entertainment management, and employee relations. The Company has also prepared operations manuals relating to food and beverage quality and service standards, as well as proper operation and playing conditions of the Company's entertainment attractions. New sales staff and entertainment personnel participate in approximately two weeks of training under the close supervision of Company management. Management strives to instill enthusiasm and dedication in its employees, regularly solicits employee suggestions concerning Company operations and endeavors to be responsive to employees' concerns. In addition, the Company has extensive and varied programs designed to recognize and reward employees for superior performance.

Efficient, attentive and friendly service is integral to the Company's overall concept. In addition to customer evaluations, the Company uses a "secret shopper" quality control program to independently monitor customer satisfaction. "Secret shoppers" are independent persons who, on a periodic basis, test the Company's food, beverage, and service as customers without the knowledge of restaurant management or personnel, and report their findings to corporate management.

The Company also participates in a guest satisfaction survey that is conducted by a nationally renowned organization. Recent results from the fourth quarter 2001 guest survey reflect that Dave & Buster's guests overwhelmingly believe Dave & Buster's provides quality service and treats them as welcome guests. Overall satisfaction with their Dave & Buster's experience is very high, as is the likelihood to return and to recommend.

Each Complex uses a variety of integrated management information systems. These systems include a computerized point-of-sale system which facilitates the movement of customer food and beverage orders between the customer areas and kitchen operations, controls cash, handles credit card authorizations, keeps track of revenues on a per-employee basis for incentive awards, and provides management with revenue and inventory data.

Marketing, Advertising and Promotion

The Company operates its marketing, advertising, and promotional programs through the corporate marketing department with the assistance of an external advertising agency, media planning/buying service and a national public relations firm.

The corporate marketing department is also responsible for controlling media and production costs. During fiscal 2001, the Company's expenditures for advertising and promotions were approximately 3.7% of its revenues.

In order to expand its customer base, the Company focuses marketing efforts in three key areas: (1) advertising and system-wide promotions; (2) field marketing and local promotions and (3) corporate and group customers (special events).

Advertising and System-wide Promotions. In fiscal 2002, the Company will strategically evolve its advertising message in order to increase customer counts through increasing party size and utilizing physical capacity during off-peak time periods. A new advertising campaign was

8

launched in March 2002 featuring the tag line "It's always a good time". This campaign includes television, radio, print and outdoor in select markets and is designed to position Dave & Buster's as an everyday destination for any combination of food, beverages or amusements.

In addition, quarterly in-store system wide promotions and point-of-sale promotions are implemented to increase visit frequency and check average.

Corporate and Group Marketing (Special Events). The Company drives its corporate and group sales programs through the business development department, which provides direction, training and support to the Special Events Managers and their team within each store. Primary focus for the Special Events Sales team is to identify and contact corporations, associations, organizations and community groups within their marketplace for the purposes of booking group events. The Special Events Sales teams pursue corporate and social group bookings through a variety of sales initiatives including outside sales calls and cultivating repeat business. The marketing department supports these efforts through promotional materials and advertising. The Company develops and maintains a database of corporate and group bookings. Each Dave & Buster's location hosts events for many multi-national, national and regional businesses. Many of the Company's corporate and group customers schedule repeat events.

Competition

The restaurant and entertainment industries are highly competitive. There are a great number of food and beverage service operations and entertainment businesses that compete directly and indirectly with the Company. Many of these entities are larger and have significantly greater financial resources and a greater number of units than does the Company. Although there are a few other companies presently utilizing the concept of combining entertainment and restaurant operations to the same extent as the Company, the Company may encounter increased competition in the future, which may have an adverse effect on the profitability of the Company. In addition, the legalization of casino gambling in geographic areas near any restaurant/entertainment company would create the possibility for entertainment alternatives, which could have a material adverse effect on the Company's business.

Employees

At February 3, 2002, the Company employed approximately 7,500 persons, approximately 180 of whom served in administrative or executive capacities, approximately 550 of whom served as restaurant and entertainment management personnel, and the remainder of whom were hourly restaurant and entertainment personnel.

None of the Company's employees are covered by collective bargaining agreements, and the Company has never experienced an organized work stoppage, strike or labor dispute. The Company believes its working conditions and compensation packages are competitive with those offered by its competitors and considers relations with its employees to be very good.

Intellectual Property

The Company registered the trademark "Dave & Buster's" with the United States Patent and Trademark Office and in various foreign countries. The Company registered and/or applied for certain additional trademarks with the United States Patent and Trademark Office and in various foreign countries. The Company considers its tradename and signature "bullseye" logo to be an important feature of its goodwill and seeks to actively monitor and protect its interest in this property in the various jurisdictions where the Company operates.

Government Regulations

The Company is subject to various federal, state and local laws affecting its business. Each Dave & Buster's is subject to licensing and regulation by a number of governmental authorities, which may include alcoholic beverage control, amusement, health and safety and fire agencies in the state or municipality in which the Complex is located. Each Dave & Buster's is required to obtain a license to sell alcoholic beverages on the premises from a state authority and, in certain locations, county and municipal authorities. Typically, licenses must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of the daily operations of each Dave & Buster's, including minimum age of patrons and employees, hours of operation, advertising, wholesale purchasing, inventory control and handling, and storage and dispensing of alcoholic beverages. The Company has not encountered any material problems relating to alcoholic beverage licenses to date. The failure to receive or retain a liquor license in a particular location could adversely affect the Company's operations and its ability to obtain such a license in other locations.

The Company is subject to "dram-shop" statutes in the states in which Complexes are located. These statutes generally provide a person injured by an intoxicated person the right to recover damages from an establishment which wrongfully served alcoholic beverages to the intoxicated individual. The Company carries liquor liability coverage as part of its existing comprehensive general liability insurance which it believes is consistent with coverage carried by other entities in the restaurant and entertainment industries. Although the Company is covered by insurance, a judgment against the Company under a dram-shop statute in excess of the Company's liability coverage could have a material adverse effect on the Company.

As a result of operating certain entertainment games and attractions including operations which offer redemption prizes, the Company is subject to amusement licensing and regulation by the states and municipalities in which it has opened Complexes. Certain entertainment attractions are heavily regulated and such regulations vary significantly between communities. From time to time, existing Complexes may be required to modify certain games, alter the mix of games or terminate the use of specific games as a result of the interpretation of regulations by state or local officials. The Company has, in the past, had to seek changes in state or local regulations to enable it to open a given location. To date, the Company has been successful in seeking all such regulatory changes.

The Company is subject to federal and state environmental regulations, but these have not had a materially negative effect on the Company's operations. More stringent and varied requirements of local and state governmental bodies with respect to zoning, land use and environmental factors could delay or prevent development of new restaurants in particular locations. The Company is subject to the Fair Labor Standards Act which governs such matters as minimum wages, overtime and other working conditions, along with the American With Disabilities Act and various family leave mandates. Although the Company expects increases in payroll expenses as a result of federal and state mandated increases in the minimum wage, such increases are not expected to be material. However, the Company is uncertain of the repercussion, if any, on other expenses as vendors are impacted by higher minimum wage standards.

Executive Officers Of The Registrant

David O. Corriveau, 50, a co-founder of the Dave & Buster's concept in 1982, has served as Co-Chief Executive Officer and President since June 1995, and as a director of the Company since May 1995 and as Co-Chairman of the Board since February 1996. Mr. Corriveau served as

10

President and Chief Executive Officer of D&B Holding (a predecessor of the Company) from 1989 through June 1995. From 1982 to 1989, Messrs. Corriveau and Corley operated the Company's business.

James W. Corley, 51, a co-founder of the Dave & Buster's concept in 1982, has served as Co-Chief Executive Officer and Chief Operating Officer since June 1995, and as a director of the Company since May 1995 and as Co-Chairman of the Board since February 1996. Mr. Corley served as Executive Vice President and Chief Operating Officer of D&B Holding from 1989 through June 1995. From 1982 to 1989, Messrs. Corley and Corriveau operated the Company's business.

Barry N. Carter, 54, has served as Vice President of Purchasing since November 2000 and as Vice President of Store Support since June 1995. He served as Vice President and Director of Store Support of D&B Holding from November 1994 to June 1995. From 1982 to November 1994, he served in operating positions of increasing responsibilities for the Company and its predecessors.

Barbara G. Core, 43, has served as Vice President of Information Technology since September 2000 and Assistant Vice President of Information Technology since November 1999. She served as Senior Director of I.T. from February 1999 to November 1999 and from April 1998 to February 1999 as PeopleSoft Implementation Team Director. From November 1997 to February 1999 she served as Director of I.T. From January 1990 to November 1997 she served in operations positions of increasing responsibilities for the Company and its predecessors.

John S. Davis, 45, has served as Vice President, General Counsel and Secretary of the Company since April 2001. Mr. Davis served as Vice President and General Counsel of Cameron Ashley Building Products, Inc., an NYSE-listed building products distributor, from 1994 to 2000 and as Associate Counsel - Mergers and Acquisitions for Electronic Data Systems Corp. (EDS), a technology services firm, from 1990 to 1994. Prior to 1990, Mr. Davis was engaged in the private practice of law.

Nancy J. Duricic, 47, has served as Vice President of Human Resources since December 1997. From June 1989 to June 1997, she served in human resources positions of increasing responsibilities in other companies, most recently as Vice President of Human Resources for Eljer Industries, Inc.

William C. Hammett, Jr., age 55, has served as Vice President, Chief Financial Officer of the Company since December 2001. He served as Vice Chairman of the Board of Directors of Pegasus Solutions, Inc. since March 2001 and as a Director of Pegasus since October 1995. From May 1998 to March 2001, he served as Chairman of the Board of Directors of Pegasus. From October 1995 to May 1998, he served as Vice Chairman of the Board of Directors of Pegasus. From August 1996 through September 1997, he served as Senior Vice President and Chief Financial Officer of LaQuinta Inns, Inc. From June 1992 through August 1996, he served as Senior Vice President, Accounting and Administration of LaQuinta Inns, Inc.

Cory J. Haynes, 41, has served as Vice President of International Operations since March, 2000 and as Vice President of Midway Operations since July 2001. He served as Vice President of Beverage Operations from May 1998 to March 2000, as Vice President, Assistant Director of Operations from September 1996 to May 1998, and from January 1996 to September 1996, as Corporate Director of Management and Development. From 1982 to January 1996, he served in operating positions of increasing responsibilities for the Company and its predecessors.

Deborah Inzer, 51, has served as Vice President of Accounting, Controller of the Company since January 2002. She served as Assistant Vice President, Assistant Controller from November 2000 to January 2002 and as Assistant Controller from July 1999 to November 2000. Ms. Inzer served as Senior Vice President of Finance at AmBrit Energy Corporation from 1989 to 1999.

Jeffrey A. Jahnke, 47, has served as Vice President of Finance, Treasurer of the Company since January 2002. He served as Controller, Vice President of Accounting for the Company from January 2000 to January 2002. From May 1998 to December 1999 he was a consultant primarily in the hospitality business. Mr. Jahnke was employed by ClubCorp International, Inc. from 1983 to 1998 in various financial positions of increasing responsibilities, his most recent position being Vice President of Accounting.

Vicki L. Johnson, 48, has served as Vice President of Business Development since August 2001. Ms Johnson was employed by ClubCorp, Inc. from January 1987 to July 2001, in various management, marketing and sales positions of increasing responsibilities, her most recent position being President, COO of Associate Clubs International, a division of ClubCorp and Senior Vice President, ClubCorp, Inc.

Margo Manning, 37, has served as Vice President of Management Development since September 2001 and as Assistant Vice President of Team Development from November 1999 to September 2001. From 1991 to October 1998, Ms. Manning served in positions of increasing responsibilities for the Company and its predecessors.

Reginald M. Moultrie, 46, has served as Vice President of Amusements since January 1999, as Vice President of Games and Merchandising from April 1998 to January 1999, and as Director of Amusements from February 1997 to April 1998. Mr. Moultrie served as Vice President of Sales for Skeeball, Inc. from 1993 to 1997.

Stuart A. Myers, 41, has served as Vice President of Marketing since January 2000. From September 1996 to December 1999 he served as Vice President of Marketing for Whataburger, Inc. Mr. Myers served as Senior Vice President/Restaurant Group Account Director at Levenson & Hill Advertising from July 1993 to September 1996.

R. Lee Pitts, 37, has served as Vice President of Training and New Store Openings since September 2000 and as Assistant Vice President and Director of Training from March 1998 to September 2000. From 1991 to March 1998 Mr. Pitts served in operating positions of increasing responsibility for the Company and its predecessors.

J. Michael Plunkett, 51, has served as Vice President of Kitchen Operations since November 2000. He served as Vice President of Information Systems from November 1996 to November 2000, as Vice President, Director of Training from June 1995 until November 1996 and as Vice President and Director of Training of D&B Holding from November 1994 to June 1995. From 1982 to November 1994, he served in operating positions of increasing responsibilities for the Company and its predecessors.

Sterling R. Smith, 49, has served as Vice President of Operations since June 1995 and as Vice President and Director of Operations of D&B Holding from November 1994 to June 1995. From 1983 to November 1994, Mr. Smith served in operating positions of increasing responsibility for the Company and its predecessors.

Bryan L. Spain, 54, has served as Vice President of Real Estate since March 1997. From 1993 until joining Dave & Buster's, Mr. Spain managed the Real Estate Acquisition and Development

Program for Incredible Universe and Computer City Divisions of Tandy Corporation. In addition, from 1991 to 1993, Mr. Spain served as Director, Real Estate Financing for Tandy Corporation.

Risk Factors

The Company hereby cautions stockholders, prospective investors in the Company and other readers of this report that the following important factors, among others, could affect the Company's stock price or cause the Company's actual results of operations to differ materially from those expressed in any forward-looking statements, oral or written, made by or behalf of the Company:

Our growth depends upon our ability to open new Complexes - The Company currently plans to open one Complex in fiscal 2002, and up to three in fiscal 2003. Our ability to achieve this expansion goal depends upon our access to sufficient capital, locating and obtaining appropriate sites, hiring and training additional management personnel, and constructing or acquiring, at reasonable cost, the necessary improvements and equipment for these Complexes. In particular, the capital resources required to develop each new Complex are significant. There is no assurance that we can complete our planned expansion or that new Complexes will perform in a manner consistent with our most recently opened Restaurant/Entertainment Complexes or make a positive contribution to our operating performance.

We operate a relatively small number of Complexes - As of February 3, 2002, the Company operates 31 Restaurant/Entertainment Complexes. The combination of the relatively small number of locations and the significant investment associated with each new Restaurant/Entertainment Complex may cause our operating results to fluctuate significantly. Due to this relatively small number of locations, poor results of operations at any one Restaurant/Entertainment Complex could materially affect our profitability. Historically, new Restaurant/Entertainment Complexes experience a drop in revenues after their first year of operation, and we do not expect that in subsequent years, any increases in comparable Complex revenues will be meaningful. Additionally, because of the substantial up-front financial requirements to open new Complexes, the investment risk related to any one Restaurant/Entertainment Complex is much larger than that associated with most other companies' restaurant or entertainment venues.

Our results of operations are dependent upon consumer discretionary spending - Our results of operations are dependent upon discretionary spending by consumers, particularly by consumers living in communities in which the Restaurant/Entertainment Complexes are located. A significant weakening in any of the local economies in which we operate may cause our customers to curtail discretionary spending which in turn could materially affect our profitability.

We compete against many larger entities - The restaurant and entertainment industries are highly competitive. We compete against many food and beverage service operations and entertainment businesses that are larger and have significantly greater financial resources and a greater number of units than we. In addition, the legislation of casino gambling in geographic areas near any of our Complexes creates the likelihood of an additional entertainment alternative, which could have a material adverse effect on our business.

Our operations are subject to many government regulations - Various federal, state and local laws and permitting and license requirements affect our business. Significant numbers of our

wage and, accordingly, legislated increases in the minimum wage will increase labor costs at our Complexes. Other governmental initiatives such as mandated health insurance, if implemented, could adversely affect us and the restaurant industry in general.

Our results of operations fluctuate in accordance with Complex openings and seasonality. As a result of the substantial revenues associated with each new Restaurant Entertainment Complex, the timing of new Complex openings will result in significant fluctuations in quarterly results. We also expect seasonality to be a factor in our results of operations due to lower third quarter revenues in the fall season, and higher fourth quarter revenues associated with the year-end holidays.

Our results of operations are dependent upon the efforts of our senior management - Our future success will depend largely on the efforts and abilities of our existing senior management, particularly David O. "Dave" Corriveau and James W. "Buster" Corley, the Co-Chief Executive Officers and founders of our business.

Our common stock price may experience volatility - The market price of our Common Stock has fluctuated substantially due to a variety of factors, including the quarterly operating results of the Company, the results of other restaurant or entertainment companies, changes in general economic conditions or the financial markets and other factors. In addition, in recent years the stock market has experienced extreme price and volume fluctuations. This volatility has had a significant effect on the market prices of securities issued by many companies for reasons unrelated to the operating performance of these companies.

Item 2. PROPERTIES

As of February 3, 2002, the Company operates a total of 31 Complexes located in 14 states. The Company is currently utilizing all available land at its owned locations. The Company's real estate leases are with unaffiliated third parties except where noted.

Location -----	State -----	Owned or Leased Property -----	Lease Expiration Date -----	Lease Expiration Date with Options -----
Dallas (Corporate HQ)	TX	Leased	October 2021	October 2041
Dallas (I)	TX	Owned	--	--
Dallas (II)	TX	Leased	December 2002	December 2007
Houston	TX	Leased	November, 2021	November 2041
Atlanta (I)	GA	Leased	December 2021	November 2041
Philadelphia	PA	Leased	January 2015*	January 2024
Chicago (I)	IL	Owned	--	--
Chicago (II)	IL	Leased	January 2016	January 2026
Hollywood	FL	Leased**	April 2016	April 2031
North Bethesda	MD	Leased	January 2018	January 2033
Ontario	CA	Leased	January 2018	January 2028
Cincinnati	OH	Leased	January 2018	January 2038
Denver	CO	Leased	December 2017	December 2032
Utica	MI	Leased	June 2018	June 2033
Irvine	CA	Leased	July 2018	July 2028
Rockland County (West Nyack)	NY	Leased	January 2019	January 2034
Orange	CA	Leased	January 2019	January 2029
Columbus	OH	Owned	--	--
San Antonio	TX	Leased	September 2018	September 2028
Atlanta (II)	GA	Leased	March 2019	March 2034
St. Louis	MO	Leased	June 2019	June 2034
Austin	TX	Leased	December 2019	December 2034
Jacksonville	FL	Owned	--	--
Providence	RI	Leased	December 2019	December 2034
Milpitas (San Jose)	CA	Leased	January 2021	January 2031
Westminster (Denver)	CO	Leased	January 2021	January 2031

Pittsburgh	PA	Leased	June 2020	June 2055
San Diego	CA	Leased	December 2020	April 2055
Miami	FL	Leased	March 2021	March 2031
Frisco	TX	Leased	August 2021	August 2036
Honolulu	HI	Leased	October 2021	October 2036
Cleveland	OH	Leased**	November 2021	November 2036

* The Company also leases additional parking facilities which expires January 2014.

** The Company owns the building and leases the real property.

The Company also leases a 47,000 square foot office building and 30,000 square foot warehouse facility in Dallas, Texas for use as its corporate headquarters and distribution center.

Item 3. LEGAL PROCEEDINGS.

The Company is a defendant in litigation arising in the ordinary course of its business, including claims resulting from "slip and fall" accidents, claims under federal and state laws governing access to public accommodations, consumer claims and employment-related claims. To date,

15

none of such litigation, some of which is covered by insurance, has had or is expected to have a material effect on the Company and its operations.

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

There were no matters submitted for a vote of security holders during the fourth quarter ended February 3, 2002.

PART II

Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

The Company's Common Stock traded on the Nasdaq National Market under the symbol DANB from June 26, 1995 until June 3, 1999. Since June 4, 1999, the Company's Common Stock is traded on the New York Stock Exchange ("NYSE") under the symbol DAB. The following table summarizes the high and low sales prices per share of Common Stock for the applicable periods indicated, as reported on the Nasdaq National Market and by the NYSE.

	High	Low
	----	---
Fiscal Year 1999		
First Quarter	\$23.25	\$18.06
Second Quarter	29.38	20.50
Third Quarter	26.88	8.75
Fourth Quarter	10.69	5.06
Fiscal Year 2000		
First Quarter	\$10.50	\$ 6.25
Second Quarter	7.50	6.00
Third Quarter	8.88	6.06
Fourth Quarter	12.25	7.56
Fiscal Year 2001		
First Quarter	\$10.80	\$ 7.75
Second Quarter	9.15	7.61
Third Quarter	8.25	5.45
Fourth Quarter	8.65	6.10

At April 17, 2002, there were 1,943 holders of record of the Common

Stock.

The Company has never paid cash dividends on its Common Stock and does not currently intend to do so as profits are reinvested into the Company to fund future expansion of its restaurant business. Payment of dividends in the future will depend upon the Company's growth, profitability, financial condition and other factors, which the Board of Directors may deem relevant.

16

Item 6. SELECTED FINANCIAL DATA.

The following table sets forth selected consolidated financial data for the Company. This data should be read in conjunction with the Consolidated Financial Statements of the Company and the Notes thereto included in Item 8 hereof and Management's Discussion and Analysis of Financial Condition and Results of Operations included in Item 7 hereof.

Income Statement Data	FISCAL YEAR	2001	2000	1999	1998	1997

		(in thousands, except per share amounts and store data)				
Food and beverage revenues		\$181,358	\$168,085	\$121,390	\$ 89,378	\$ 64,703
Amusements and other revenues		176,651	164,218	125,744	92,906	63,801
		-----	-----	-----	-----	-----
Total revenues		358,009	332,303	247,134	182,284	128,504
Cost of revenues		66,939	61,547	45,720	35,582	24,795
Operating payroll and benefits		110,478	101,143	76,242	52,206	36,227
Other store operating expenses		106,971	90,581	65,292	45,862	32,787
General and administrative expenses		20,653	20,019	14,988	10,579	8,489
Depreciation and amortization expense		28,693	25,716	19,884	12,163	8,470
Preopening costs		4,578	5,331	6,053	4,539	3,246
		-----	-----	-----	-----	-----
Total costs and expenses		338,312	304,337	228,179	160,931	114,014
Operating income		19,697	27,966	18,955	21,353	14,490
Interest income (expense), net		(7,820)	(8,712)	(3,339)	194	(179)
		-----	-----	-----	-----	-----
Income before provision for income taxes and cumulative effect of a change in an accounting principle		11,877	19,254	15,616	21,547	14,311
Provision for income taxes		4,299	7,009	5,724	7,969	5,414
		-----	-----	-----	-----	-----
Income before cumulative effect of a change in an accounting principle		7,578	12,245	9,892	13,578	8,897
Cumulative effect of a change in an accounting principle, net of income tax benefit of \$2,928		--	--	4,687	--	--
		-----	-----	-----	-----	-----
Net income		\$ 7,578	\$ 12,245	\$ 5,205	\$ 13,578	\$ 8,897
Net income per share - basic						
Before cumulative effect of a change in an accounting principle		\$.58	\$.95	\$.76	\$ 1.04	\$.77
Cumulative effect of a change in an accounting principle		--	--	.36	--	--
		-----	-----	-----	-----	-----
		\$.58	\$.95	\$.40	\$ 1.04	\$.77
Net income per share - diluted						
Before cumulative effect of a change in an accounting principle		\$.58	\$.94	\$.75	\$ 1.03	\$.76
Cumulative effect of a change in an accounting principle		--	--	.36	--	--
		-----	-----	-----	-----	-----
		\$.58	\$.94	\$.39	\$ 1.03	\$.76
Weighted average shares outstanding						
Basic		12,956	12,953	13,054	13,053	11,532
Diluted		13,016	12,986	13,214	13,246	11,711
Balance Sheet Data						
Working capital		\$ (4,478)	\$ 5,126	\$ 8,957	\$ 8,220	\$ 26,408
Total assets		309,134	303,875	268,184	216,592	158,989
Long-term obligations		84,896	103,860	91,000	42,500	12,000
Stockholders' equity		170,146	162,387	149,899	145,502	133,356
Number of Complexes Open at End of Period						
Company operated		31	27	23	17	12

17

Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS

OF OPERATIONS (DOLLARS IN THOUSANDS)

Management's Discussion and Analysis of Financial Condition and Results of Operations discusses our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles. The preparation of these financial statements requires management to make certain estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. On an ongoing basis, management evaluates its estimates and judgements, including those that relate to depreciable lives, goodwill and debt covenants. The estimates and judgements made by management are based on historical data and on various other factors believed to be reasonable under the circumstances.

Management believes the following critical accounting policies, among others, affect its more significant judgements and estimates used in the preparation of its consolidated financial statements.

Depreciable lives - expenditures for new facilities and those which substantially increase the useful lives of the property, including interest during construction, are capitalized along with equipment purchases at cost. These costs are depreciated over various methods based on an estimate of the depreciable life, resulting in a charge to the operating results of the Company. The actual results may differ from these estimates under different assumptions or conditions. The depreciable lives are as follows:

Property and Equipment	
Games	5 years
Buildings	40 years
Furniture, fixtures and equipment	5 to 10 years
Leasehold and building improvements	Shorter of 20 years or lease life
Intangible Assets	
Trademarks	Over statutory lives
Lease Rights	Over remaining lease term

Goodwill - is being amortized over 30 years. Whenever there is an indication of impairment, the Company evaluates the recoverability of goodwill using future undiscounted cash flows. Any resulting impairment loss could have a material adverse impact on our financial condition and results of operations, however an impairment charge was not considered necessary under FAS 121 as of February 3, 2002.

In June 2001, the Financial Accounting Standards Board issued Statements of Financial Accounting Standards No. 141, Business Combinations and No. 142, Goodwill and Other Intangible Assets ("Statements"), effective for fiscal years beginning after December 15, 2001. Under the new rules, goodwill and intangible assets deemed to have indefinite lives will no longer be amortized but will be subject to annual impairment tests in accordance with the Statements. Other intangible assets will continue to be amortized over their useful lives.

The Company will apply the new standards on accounting for goodwill and other intangible assets beginning in the first quarter of 2002. Application of the nonamortization provisions of the Statements is expected to result in an increase in income before tax of \$349 (\$.03 per diluted share) in 2002 as a result of nonamortization of existing goodwill. During the first quarter 2002, the Company will perform the required impairment test of goodwill as of February 3, 2002. Based on current analysis, the Company will record an expense to "Cumulative effect of a change

in accounting principle" of \$4,541 net of income tax benefit of \$2,555 (\$.35 per diluted share), upon the adoption of the new standard.

Debt Covenants - of the Company's facility agreement require compliance with certain financial covenants including a minimum consolidated tangible net worth level, maximum leverage ratio, minimum fixed charge coverage and maximum level of capital expenditures. The Company was in compliance with the covenants for the fiscal year ended February 3, 2002. The Company believes the results of operations for the fiscal year ending February 2, 2003 and thereafter would enable us to remain in compliance with the existing covenants absent any material negative event affecting the U.S. economy as a whole. However, the Company's expectations of future operating results and continued compliance with the debt covenants cannot be assured and our lenders' actions are not controllable by us. If the projections of future operating results are not achieved and the debt is placed in default, the Company would experience a material adverse impact on our reported financial position and results of operations.

FISCAL 2001 COMPARED TO FISCAL 2000

Total revenues increased to \$358,009 for fiscal 2001 from \$332,303 for fiscal 2000, an increase of \$25,706 or 7.7%. New stores opened in fiscal 2001 increased revenues by \$28,431. Revenues from comparable stores decreased by 2.8% in fiscal 2001. The decrease in comparable stores revenues is primarily attributed to the attack on New York and Washington, D.C. on September 11th resulting in a decline in corporate events of 15.4%. Total revenues from licensing agreements were \$537.

Costs of revenues increased to \$66,939 for fiscal 2001 from \$61,547 for fiscal 2000, an increase of \$5,392 or 8.8%. The increase was principally attributed to opening four new stores during the year. As a percentage of revenues, cost of revenues were up .2% to 18.7% for fiscal 2001 versus 18.5% in fiscal 2000 due to freight costs and higher amusement costs associated with redemption, offset by lower food costs.

Operating payroll and benefits increased to \$110,478 for fiscal 2001 from \$101,143 for fiscal 2000, an increase of \$9,335 or 9.2%. As a percentage of revenue, operating payroll and benefits were 30.9% in fiscal 2001 up .5% from 30.4% in fiscal 2000 due to higher store fixed labor and benefits.

Other store operating expenses increased to \$106,971 for fiscal 2001 from \$90,581 for fiscal 2000, an increase of \$16,390 or 18.1%. As a percentage of revenues, other store operating expenses were 29.9% in fiscal 2001 as compared to 27.3% in fiscal 2000. The increase in other store operating expenses is due to increases in utilities, marketing and occupancy costs.

General and administrative expenses increased to \$20,653 in fiscal 2001 from \$20,019 for fiscal 2000, an increase of \$634 or 3.2%. As a percentage of revenues, general and administrative expenses for fiscal 2001 were 5.8% and 6.0% for fiscal 2000.

Depreciation and amortization expense increased \$2,977 to \$28,693 in fiscal 2001 from \$25,716 in fiscal 2000. As a percentage of revenues, depreciation and amortization increased to 8.0% from 7.7% for the comparable period due to new store openings.

Preopening costs decreased to \$4,578 for fiscal 2001 from \$5,331 for fiscal 2000, a decrease of \$753 or 14.1%. As a percentage of revenues, preopening costs were 1.3% for fiscal 2001 as compared to 1.6% for fiscal 2000. This decrease is due to timing of store openings and only one store scheduled to open in fiscal 2002.

Interest expense-net decreased to \$7,820 for fiscal 2001 from \$8,712 for fiscal 2000. The decrease was due to lower interest rates in fiscal year 2001.

The effective tax rate for fiscal 2001 was 36.2% as compared to 36.4% for fiscal 2000 and was the result of a lower effective state tax rate.

FISCAL 2000 COMPARED TO FISCAL 1999

Total revenues increased to \$332,303 for fiscal 2000 from \$247,134 for fiscal 1999, an increase of \$85,169 or 34%. New stores opened in fiscal 2000 and in fiscal 1999 accounted for 91% of the increase. Revenues at comparable stores increased 3.6% for fiscal 2000. Increases in revenues were also attributable to a 2% overall price increase and a higher average guest check. Total revenues for fiscal 2000 from licensing agreements were \$966.

Cost of revenues increased to \$61,547 for fiscal 2000 from \$45,720 for fiscal 1999, an increase of \$15,827 or 35%. The increase was principally attributable to the 34% increase in revenues. As a percentage of revenues, cost of revenues were the same for fiscal 2000 and fiscal 1999 at 18.5%.

Operating payroll and benefits increased to \$101,143 for fiscal 2000 from \$76,242 for fiscal 1999, an increase of \$24,901 or 33%. As a percentage of revenue, operating payroll and benefits decreased to 30.4% in fiscal 2000 from 30.9% in fiscal 1999 due to lower fixed labor costs, taxes and benefits offset by higher variable labor costs.

Other store operating expenses increased to \$90,581 for fiscal 2000 from \$65,292 for fiscal 1999, an increase of \$25,289 or 39%. As a percentage of revenues, other store operating expenses were 27.3% of revenues in fiscal 2000 as compared to 26.4% of revenues in fiscal 1999. Other store operating expenses were higher due to higher marketing costs associated with the Company's 2000 marketing campaign.

General and administrative expenses increased to \$20,019 for fiscal 2000 from \$14,988 for fiscal 1999, an increase of \$5,031 or 34%. The increase over the prior comparable period resulted from increased administrative payroll and related costs for new personnel, and additional costs associated with the Company's future growth plans. As a percentage of revenues, general and administrative expenses decreased to 6.0% in fiscal year 2000 from 6.1% in fiscal year 1999.

Depreciation and amortization expense increased to \$25,716 for fiscal 2000 from \$19,884 for fiscal 1999, an increase of \$5,832 or 29%. The increase was attributable to new stores opened in fiscal 2000 and in fiscal 1999. As a percentage of revenues, depreciation and amortization decreased to 7.7% from 8.0% for the comparable prior period.

Preopening costs decreased to \$5,331 for fiscal 2000 from \$6,053 for fiscal 1999, a decrease of \$722 or 12%. As a percentage of revenues, preopening costs were 1.6% for fiscal 2000 as compared to 2.4% for fiscal 1999. This decrease was due to the lesser number of new stores opened in 2000 compared to 1999.

Interest expense - net increased to \$8,712 for fiscal 2000 from \$3,339 for fiscal 1999. The increase was due to a higher average debt balance and higher interest rates in 2000 versus 1999.

20

The effective tax rate for fiscal year 2000 was 36.4% as compared to 36.7% for fiscal year 1999 and was the result of a lower effective state tax rate.

LIQUIDITY AND CAPITAL RESOURCES

Net cash provided by operating activities increased to \$44,917 in 2001 compared to \$36,678 in 2000 and \$24,940 in 1999. Operating cash flows in 2001 increased primarily due to the timing of accounts payable disbursements. The increase in 2000 was attributable to improvement in profitability and timing of operational receipts and payments.

Cash used in investing activities was \$25,727 in 2001 and \$53,574 in

2000 compared to \$73,798 in 1999. All investing expenditures are related to opening of new stores and normal recurring maintenance at previously existing stores.

Financing activities provided cash of \$47,440 in 1999 and \$16,984 in 2000 compared to a use of cash of \$17,407 in 2001. Net use of cash by financing activities in 2001 was directly attributed to repayment of long-term debt of \$41,648 offset by borrowings from long-term debt of \$24,060. Net cash provided by financing activities in 2000 and 1999 was due to borrowings under long-term debt exceeding any repayments during each year.

The Company has a \$110,000 senior secured revolving credit and term loan facility. The facility includes a five-year revolver and five and seven-year term debt. The facility agreement calls for quarterly payments of principal on the term debt through maturity. Borrowing under the facility bears interest at a floating rate based on LIBOR (1.77% at February 3, 2002) or, at the Company's option, the bank's prime rate (4.75% at February 3, 2002) plus, in each case, a margin based upon financial performance. The facility is secured by all assets of the Company. The facility has certain financial covenants including a minimum consolidated tangible net worth level, a maximum leverage ratio, minimum fixed charge coverage and maximum level of capital expenditures. On November 19, 2001, the Company amended the facility to allow proceeds from sale/leaseback transactions to be applied to both the revolving credit and the term loans for a limited period. At February 3, 2002, \$5,208 was available under this facility.

The Company has entered into an agreement that expires in 2007, to change a portion of its variable rate debt to fixed-rate debt. Notional amounts aggregating \$51,255 are fixed at 5.44%. The Company is exposed to credit losses for periodic settlements of amounts due under the agreements if LIBOR decreases. A charge of \$858 to interest expense was incurred in fiscal 2001 under the agreement.

The market risks associated with the agreements are mitigated because increased interest payments under the agreement resulting from reductions in LIBOR are effectively offset by a reduction in interest expense under the debt obligation.

The Company plans to open one new store during the fiscal year ended February 2, 2003. The preopening and construction costs of the new store will be provided from internal cash flow. Subsequent to the fiscal year ending February 2, 2003, the Company intends to open up to three stores per year, if adequate external financing can be secured to supplement internally generated cash flow.

SALE/LEASEBACK TRANSACTIONS

During the year ended February 3, 2002, the Company completed the sale/leaseback of two stores (Atlanta and Houston) and the corporate headquarters in Dallas. Cash proceeds of \$18,474 were received along with \$5,150 in twenty year interest bearing notes receivable at 7-7.5%. The locations were sold to non-affiliated entities. No revenue or profit was recorded at the time of the transaction.

Upon execution of the sale/leaseback transactions, property costs of \$27,360 and accumulated depreciation of \$3,832 were removed from the Company's books resulting in a loss of \$272 which was recognized in 2001 and a gain of \$713 on one facility being amortized over the term of the operating lease.

Future operating lease obligations under the lease agreements are as follows: \$2,917 in 2002, \$2,957 in 2003, \$2,997 in 2004, \$3,037 in 2005, \$3,078 in 2006 and \$50,976 thereafter. Future minimum note payments and interest income associated with the sale/leasebacks at Houston and Atlanta are as follows: \$488 in 2002, \$488 in 2003, \$488 in 2004, \$488 in 2005 and \$7,782 thereafter.

CONTRACTUAL OBLIGATIONS AND COMMERCIAL COMMITMENTS

The following tables set forth the Company's contractual obligations and commercial commitments (in thousands):

Contractual Obligations	Total	Payments Due by Period			
		1 Year or less	2-3 Years	4-5 Years	After 5 Years
Long-term debt	\$ 90,396	\$ 5,500	\$19,700	\$54,653	\$ 10,543
Operating leases	344,633	19,474	37,614	36,566	250,979
Operating leases under sale/leaseback transactions	65,964	2,917	5,953	6,115	50,979
Total	\$ 500,993	\$27,891	\$63,267	\$97,334	\$ 312,501

Other Commercial Commitments	Total	Amount of Commitment Expiration Per Period			
		1 Year or less	2-3 Years	4-5 Years	After 5 Years
Letters of Credit	\$ 940	\$ 940	\$ --	\$ --	\$ --

QUARTERLY FLUCTUATIONS, SEASONALITY, AND INFLATION

As a result of the substantial revenues associated with each new Complex, the timing of new Complex openings will result in significant fluctuations in quarterly results. The Company expects seasonality to be a factor in the operation or results of its business in the future due to expected lower third quarter revenues due to the fall season, and expects higher fourth quarter revenues associated with the year-end holidays. The effects of supplier price increases are not expected to be material. The Company believes low inflation rates in its market areas have contributed to stable food and labor costs in recent years. However, there is no assurance that low inflation rates will continue or that the Federal minimum wage rate will not increase.

MARKET RISK

The Company's market risk exposure relates to changes in the general level of interest rates. The Company's earnings are affected by changes in interest rates due to the impact those changes have on its interest expense from variable-rate debt. The Company's agreement to fix a portion of its variable-rate debt mitigates this exposure.

"SAFE HARBOR" STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

Certain statements in this Annual Report are not based on historical facts but are "forward-looking statements" that are based on numerous assumptions made as of the date of this report. Forward looking statements are generally identified by the words "believes", "expects", "intends", "anticipates", "scheduled", and similar expressions. Such forward-looking statements involve known and unknown risks, uncertainties, and other factors which may cause the actual results, performance, or achievements of Dave & Buster's, Inc. to be materially

different from any future results, performance, or achievements expressed or implied by such forward-looking statements. Such factors include, among others, the following: general economic and business conditions; competition; availability of capital; locations and terms of sites for Complex development; quality of management; changes in, or the failure to comply with, government regulations; and other risks indicated in this filing.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company's market risk exposure relates to changes in the general level of interest rates. The Company's earnings are affected by changes in interest rates due to the impact those changes have on its interest expense from variable-rate debt. The Company's agreement to fix a portion of its variable-rate debt mitigates this exposure.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

See Item 14(a)(1).

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

PART III

Item 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information set under the caption "Director and Nominee Information" appearing in the Company's Proxy Statement for the Annual Meeting of Stockholders to be held on June, 11, 2002 is incorporated herein by reference. Certain information with respect to the executive officers of the Company is included in Part I hereof under the caption "Executive Officers of the Registrant".

23

Item 11. EXECUTIVE COMPENSATION

The information set under the captions "Summary of Executive Compensation" and "Director Compensation" appearing in the Company's Proxy Statement for the Annual Meeting of Stockholders to be held on June 11, 2002 is incorporated herein by reference.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

The information set under the caption "Beneficial Ownership of Common Stock" appearing in the Company's Proxy Statement for the Annual Meeting of Stockholders to be held on June 11, 2002 is incorporated herein by reference.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

The information set under the captions "Compensation Committee Interlocks and Insider Participation" and "Certain Transactions" appearing in the Company's Proxy Statement for the Annual Meeting of Stockholders to be held on June 11, 2002 is incorporated herein by reference.

PART IV

Item 14 EXHIBITS, FINANCIAL STATEMENTS AND REPORTS ON FORM 8-K

(a) (1) Financial Statements	Page
Consolidated Balance Sheets - February 3, 2002 and February 4, 2001	F-1
Consolidated Statement of Income - Fiscal years ended February 3, 2002, February 4, 2001 and January 30, 2002.	F-2

Consolidated Statements of Stockholders' Equity - Fiscal years ended February 3, 2002, February 4, 2001 and January 30, 2000	F-3
Consolidated Statements of Cash Flows - Fiscal years ended February 2, 2002, February 4, 2001 and January 30, 2000	F-4
Notes to Consolidated Financial Statements	F-5 through F-11
Report of Independent Auditors	F-12

(a) (2) Financial Statement

All schedules are omitted as the required information is inapplicable or the information is presented in the financial statements or related notes.

(a) (3) Exhibits incorporated by reference or filed with this Report

The exhibits listed below are filled with or incorporated by reference into this Annual Report on Form 10K. Exhibits denominated with numbered footnotes are incorporated

24

by reference to the other filings with the Commission set forth below. Unless otherwise indicated, the exhibit number below corresponds to the exhibit number incorporated by reference. ITEMS LISTED IN BOLDFACE ARE MANAGEMENT CONTRACTS OR COMPENSATORY PLANS OR ARRANGEMENTS REQUIRED TO BE FILED PURSUANT TO ITEM 14(c) OF THIS REPORT.

- 3.1 Restated Articles of Incorporation of the Company. (1)
- 3.2 Bylaws of the Company. (1)
- 10.1 Revolving Credit and Term Loan Agreement, dated June 30, 2000, among the Company and its subsidiaries, Fleet National Bank (as agent) and the financial institutions named therein. (2)
- 10.1.1 Amendment No. 1 to Revolving Credit and Term Loan Agreement dated May 31, 2001 by and among the Company and its subsidiaries, Fleet National Bank (as agent) and the financial institutions named therein. (7)
- 10.1.2 Amendment No. 2 to Revolving Credit and Term Loan Agreement dated November 19, 2001 by and among the Company and its subsidiaries, Fleet National Bank (as agent) and the financial institutions names therein. (8)
- 10.2 - 10.6 Intentionally omitted.
- 10.7 Rights Agreement between the Company and Rights Agent, dated June 16, 1995. (1)
- 10.8 1995 STOCK OPTION PLAN (AS AMENDED AND RESTATED APRIL 26, 2000). (3)
- 10.9 STOCK OPTION PLAN FOR OUTSIDE DIRECTORS. (4)
- 10.11 EMPLOYMENT AND EXECUTIVE RETENTION AGREEMENTS FOR CO-CHIEF EXECUTIVE OFFICERS, DATED JUNE 16, 1995. (5)
- 10.12 FORM OF INDEMNITY AGREEMENTS WITH EXECUTIVE OFFICERS AND DIRECTORS. (6)
- 10.13 Intentionally Omitted.
- 10.14 EXECUTIVE RETENTION AGREEMENT FOR STERLING R. SMITH DATED JUNE 11, 2001 (8)

- 10.15 Intentionally Omitted.
- 10.16 Agreement of Sale and Purchase dated October 1, 2001 between the Company, as seller, and General Electric Capital, Business Asset Funding Corporation, as purchaser, for the Company's corporate headquarters in Dallas, Texas. (8)
- 10.17 Lease Agreement dated October 1, 2001 between General Electric Capital Business Asset Funding Corporation, as landlord, and the Company, as tenant for the Company's corporate headquarters in Dallas, Texas. (8)

25

- 10.18 Agreement of Sale and Purchase dated November 12, 2001 between D&B Realty Holding, Inc., as seller and KAZA I, Ltd. As purchaser for Houston, Texas property. (9)
- 10.19 Lease Agreement dated December 14, 2001 between KAZA I L.P. as landlord, and Dave & Buster's I, L.P. as tenant for Houston, Texas property. (9)
- 10.20 Agreement of Sale and Purchase dated as of December 17, 2001 between D&B Realty Holding, Inc., as seller, and Landfair, LLC as purchaser for Marietta, Georgia property. (9)
- 10.21 Lease Agreement dated December 17, 2001 between Landfair LLC, as landlord, and Dave & Buster's I, L.P., as tenant, for Marietta, Georgia property. (9)
- 10.22 EXECUTIVE RETENTION AGREEMENT DATED JUNE 7, 2001 BETWEEN THE COMPANY AND JOHN S. DAVIS. (9)
- 10.23 EXECUTIVE RETENTION AGREEMENT DATED DECEMBER 3, 2001 BETWEEN THE COMPANY AND W. C. HAMMETT, JR. (9)
- 21.1 Subsidiaries of the Company. (9)
- 23 Independent Auditors' Consent. (9)

(b) Reports of Form 8-K

The Company was not required to file a current report on Form 8-K during the thirteen weeks ended February 3, 2002.

(c) Exhibits.

The Index of Exhibits filed or incorporated by reference pursuant to Item 601 of Regulation S-K and the Exhibits being filed with this Report are included following the financial statement pages of this Form 10-K.

(d) Financial Statements of Subsidiaries or Affiliates.

Not applicable.

-
- (1) Filed as an Exhibit to the registrant's Form 10-Q for the 13-week period ended April 30, 1995 and incorporated herein by reference.
 - (2) Filed as an Exhibit to the registrant's Form 10-Q for the 13-week period ended July 30, 2000 and incorporated herein by reference.
 - (3) Filed as an Exhibit to the registrant's Proxy Statement dated April 28, 2000 and incorporated herein by reference.

26

- (4) Filed as an Exhibit to the registrant's Form 10-K for the 52 week period ended February 1, 1997 and incorporated herein by reference.
- (5) Filed as an Exhibit to the registrants Form 10-K for the fiscal year ended February 4, 2001.
- (6) Filed as an Exhibit to the registrant's Form 10 filed April 11, 1995 and incorporated herein by reference.
- (7) Filed as an Exhibit to the registrant's Form 10-Q for the 13 week period ended August 5, 2001.
- (8) Filed as an Exhibit to the registrant's Form 10-Q for the 13 week period ended November 4, 2001.
- (9) Filed herewith.

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.

Dave & Buster's, Inc.
a Missouri corporation

By: /s/ W.C. Hammett, Jr.

W. C. Hammett, Jr.,
Vice President, Chief
Financial Officer

Date: April 22, 2002

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on April 22, 2002.

Name ----	Title -----
/s/ David O. Corriveau ----- David O. Corriveau	Co-Chairman of the Board, Co-Chief Executive Officer, President, and Director (Principal Executive Officer)
/s/ James W. Corley ----- James W. Corley	Co-Chairman of the Board, Co-Chief Executive Officer, Chief Operating Officer and Director
/s/ W.C. Hammett, Jr. ----- W. C. Hammett, Jr.	Vice President, Chief Financial Officer (Principal Financial and Accounting

	Officer)
/s/ Allen J. Bernstein ----- Allen J. Bernstein	Director
/s/ Peter A. Edison ----- Peter A. Edison	Director
/s/ Bruce H. Hallett ----- Bruce H. Hallett	Director
/s/ Walter S. Henrion ----- Walter S. Henrion	Director
/s/ Mark A. Levy ----- Mark A. Levy	Director
/s/ Christopher C. Maguire ----- Christopher C. Maguire	Director

29

CONSOLIDATED BALANCE SHEETS
DAVE & BUSTER'S, INC.

FEBRUARY 3, 2002 FEBRUARY 4, 2001
(in thousands, except share and per share amounts)

Assets		
Current assets:		
Cash and cash equivalents	\$ 4,521	\$ 3,179
Inventories	25,964	21,758
Prepaid expenses	1,442	3,663
Other current assets	2,445	1,787
	-----	-----
Total current assets	34,372	30,387
Property and equipment, net (Note 2)	258,302	260,467
Goodwill, net of accumulated amortization of \$2,612 and \$2,263	7,096	7,445
Other assets	9,364	5,576
	-----	-----
Total assets	\$ 309,134	\$ 303,875
Liabilities and Stockholders' Equity		
Current liabilities:		
Current installments of long-term debt (Note 4)	\$ 5,500	\$ 4,124
Accounts payable	15,991	9,291
Accrued liabilities (Note 3)	11,085	7,050
Income taxes payable (Note 5)	5,054	3,567
Deferred income taxes (Note 5)	1,220	1,229
	-----	-----
Total current liabilities	38,850	25,261
Deferred income taxes (Note 5)	8,143	7,667
Other liabilities	7,099	4,700
Long-term debt, less current installments (Note 4)	84,896	103,860
Commitments and contingencies (Notes 4, 6 and 11)		
Stockholders' equity (Note 7):		
Preferred stock, 10,000,000 authorized; none issued	--	--
Common stock, \$0.01 par value, 50,000,000 authorized; 12,959,209 and 12,953,375 shares issued and outstanding as of February 3, 2002 and February 4, 2001, respectively	131	131
Paid in capital	115,701	115,659
Restricted stock awards	382	243
Retained earnings	55,778	48,200
	-----	-----
Total stockholders' equity	171,992	164,233
Less: treasury stock, at cost (175,000 shares)	1,846	1,846
	-----	-----
Total stockholders' equity	170,146	162,387
	-----	-----
Total liabilities and stockholders' equity	\$ 309,134	\$ 303,875

See accompanying notes to consolidated financial statements.

F-1

CONSOLIDATED STATEMENTS OF INCOME
DAVE & BUSTER'S, INC.

FISCAL YEAR	2001	2000	1999
	(in thousands, except per share amounts)		
Food and beverage revenues	\$ 181,358	\$ 168,085	\$ 121,390
Amusement and other revenues	176,651	164,218	125,744
	-----	-----	-----
Total revenues	358,009	332,303	247,134
Cost of revenues	66,939	61,547	45,720
Operating payroll and benefits	110,478	101,143	76,242
Other store operating expenses	106,971	90,581	65,292
General and administrative expenses	20,653	20,019	14,988
Depreciation and amortization expense	28,693	25,716	19,884
Preopening costs	4,578	5,331	6,053
	-----	-----	-----
Total costs and expenses	338,312	304,337	228,179
Operating income	19,697	27,966	18,955
Interest expense, net	7,820	8,712	3,339
	-----	-----	-----
Income before provision for income taxes and cumulative effect of a change in an accounting principle	11,877	19,254	15,616
Provision for income taxes (Note 5)	4,299	7,009	5,724
	-----	-----	-----
Income before cumulative effect of a change in an accounting principle	7,578	12,245	9,892
Cumulative effect of a change in an accounting principle, net of income tax benefit of \$2,928	--	--	4,687
	-----	-----	-----
Net income	\$ 7,578	\$ 12,245	\$ 5,205
Net income per share - basic			
Before cumulative effect of a change in an accounting principle	\$.58	\$.95	\$.76
Cumulative effect of a change in an accounting principle	--	--	.36
	-----	-----	-----
Net income per share - diluted	\$.58	\$.95	\$.40
Net income per share - diluted			
Before cumulative effect of a change in an accounting principle	\$.58	\$.94	\$.75
Cumulative effect of a change in an accounting principle	--	--	.36
	-----	-----	-----
Net income per share - diluted	\$.58	\$.94	\$.39
Weighted average shares outstanding			
Basic	12,956	12,953	13,054
Diluted	13,016	12,986	13,214

See accompanying notes to consolidated financial statements.

F-2

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
DAVE & BUSTER'S, INC.

	Common Stock		Paid in Capital	Restricted Stock Awards (in thousands)	Retained Earnings	Treasury Stock	Total
	Shares	Amount					
Balance, January 31, 1999	13,069	\$ 131	\$114,621	\$ --	\$ 30,750	\$ --	\$ 145,502
Proceeds from exercising stock options	59	--	786	--	--	--	786
Tax benefit related to stock option exercises	--	--	252	--	--	--	252
Purchase of treasury stock	(175)	--	--	--	--	(1,846)	(1,846)
Net income	--	--	--	--	5,205	--	5,205

Balance, January 30, 2000	12,953	\$ 131	\$115,659	\$ --	\$ 35,955	\$ (1,846)	\$ 149,899
Amortization of restricted stock awards	--	--	--	243	--	--	243
Net income	--	--	--	--	12,245	--	12,245
Balance, February 4, 2001	12,953	\$ 131	\$115,659	\$ 243	\$ 48,200	\$ (1,846)	\$ 162,387
Amortization of restricted stock awards	--	--	--	139	--	--	139
Proceeds from exercising stock options	6	--	40	--	--	--	40
Tax benefit related to stock option exercises	--	--	2	--	--	--	2
Net income	--	--	--	--	7,578	--	7,578
Balance, February 3, 2002	12,959	\$ 131	\$115,701	\$ 382	\$ 55,778	\$ (1,846)	\$ 170,146

See accompanying notes to consolidated financial statements.

F-3

CONSOLIDATED STATEMENTS OF CASH FLOWS
DAVE & BUSTER'S, INC.

	FISCAL YEAR		
	2001	2000	1999
	(in thousands)		
Cash flows from operating activities:			
Net income	\$ 7,578	\$ 12,245	\$ 5,205
Adjustments to reconcile net income to net cash provided by operating activities:			
Cumulative effect of change in an accounting principle	--	--	4,687
Depreciation and amortization	28,693	25,716	19,884
Provision for deferred income taxes	467	1,182	986
Restricted stock awards	--	243	--
Gain on sale of assets	(441)	--	--
Changes in assets and liabilities			
Inventories	(4,206)	(5,515)	(5,432)
Prepaid expenses	2,221	(1,559)	(361)
Other assets	(4,457)	(671)	(666)
Accounts payable	6,700	(2,577)	(1,827)
Accrued liabilities	4,035	2,192	1,073
Income taxes payable	1,487	3,567	--
Other liabilities	2,399	1,855	1,391
Net cash provided by operating activities	44,476	36,678	24,940
Cash flows from investing activities:			
Proceeds from sale/leasebacks	18,474	--	--
Capital expenditures	(44,201)	(53,574)	(73,798)
Net cash used in investing activities	(25,727)	(53,574)	(73,798)
Cash flows from financing activities:			
Purchase of treasury stock	--	--	(1,846)
Borrowings under long-term debt	24,060	131,292	50,000
Repayments of long-term debt	(41,648)	(114,308)	(1,500)
Proceeds from issuance of common stock, net	181	--	786
Net cash (used in)/provided by financing activities	(17,407)	16,984	47,440
Increase (decrease) in cash and cash equivalents	1,342	88	(1,418)
Beginning cash and cash equivalents	3,179	3,091	4,509
Ending cash and cash equivalents	\$ 4,521	\$ 3,179	\$ 3,091
Supplemental disclosures of cash flow information:			
Cash paid for income taxes	\$ 2,590	\$ 1,941	\$ 4,188
Cash paid for interest, net of amounts capitalized	\$ 7,261	\$ 8,363	\$ 3,455

See accompanying notes to consolidated financial statements.

F-4

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DAVE & BUSTER'S, INC.

IN THOUSANDS EXCEPT PER SHARE AMOUNTS

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF PRESENTATION - The consolidated financial statements include the accounts of Dave & Buster's, Inc. and all wholly-owned subsidiaries (the "Company"). All material intercompany accounts and transactions have been eliminated in consolidation. The Company's one industry segment is the ownership and operation of restaurant/entertainment complexes (a "Complex" or "Store") under the name "Dave & Buster's," which are principally located in the United States.

USE OF ESTIMATES - The preparation of financial statements in conformity with generally accepted accounting principles requires management to make certain estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

FISCAL YEAR - The Company's fiscal year ends on the Sunday after the Saturday closest to January 31. References to 2001, 2000 and 1999 are to the 52 weeks ended February 3, 2002 and to the 53 weeks ended February 4, 2001 and to the 52 weeks ended January 30, 2000, respectively.

INVENTORIES - Inventories, which consist of food, beverage and merchandise are reported at the lower of cost or market determined on a first-in, first-out method. Static supplies inventory is capitalized at each store opening date and reviewed periodically for valuation.

PREOPENING COSTS - The Company adopted Statement of Position 98-5 ("SOP 98-5"), "Reporting on the Costs of Start-Up Activities", in the first quarter of fiscal 1999. This accounting standard requires the Company to expense all start-up and preopening costs as they are incurred. The Company previously deferred such costs and amortized them over the twelve-month period following the opening of each store. The cumulative effect of this accounting change, net of income tax benefit of \$2,928, was \$4,687 in fiscal 1999.

PROPERTY AND EQUIPMENT - Expenditures for new facilities and those which substantially increase the useful lives of the property, including interest during construction, are capitalized. Interest capitalized in 2001, 2000 and 1999 was \$892, \$1,555 and \$1,623, respectively. Equipment purchases are capitalized at cost. Property and equipment lives are estimated as follows: buildings, 40 years; leasehold and building improvements, shorter of 20 years or lease life; furniture, fixtures and equipment, 5 to 10 years; games, 5 years.

GOODWILL - Goodwill of \$9,708 is being amortized over 30 years. Whenever there is an indication of impairment, the Company evaluates the recoverability of goodwill using future undiscounted cash flows. In June 2001, the Financial Accounting Standards Board issued Statements of Financial Accounting Standards No. 141, Business Combinations and No. 142, Goodwill and Other Intangible Assets ("Statements"), effective for fiscal years beginning after December 15, 2001. Under the new rules, goodwill and intangible assets deemed to have indefinite lives will no longer be amortized but will be subject to annual impairment tests in accordance with the Statements. Other intangible assets will continue to be amortized over their useful lives.

The Company will apply the new standards on accounting for goodwill and other intangible assets beginning in the first quarter of 2002. Application of the nonamortization provisions of the Statements is expected to result in an increase in income before tax of \$349 (\$.03 per diluted share) in 2002 as a result of nonamortization of existing goodwill. During the first quarter of 2002, the Company will perform the required impairment test of goodwill as of February 3, 2002. Based on current analysis, the Company will record an expense to "Cumulative effect of a change in accounting principle" of \$4,541 net of income tax benefit of \$2,555 (\$.35 per diluted share), upon the adoption of the new standard.

DEPRECIATION AND AMORTIZATION - Property and equipment, excluding most games, are depreciated on the straight-line method over the estimated useful life of the assets. Games are generally depreciated on the 150%-double-declining-balance method over the estimated useful lives of the assets. Intangible assets are amortized on the

straight-line method over estimated useful lives as follows: trademarks over statutory lives and lease rights over remaining lease terms.

INTEREST RATE SWAP AGREEMENTS - The Company adopted Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities ("FAS 133") effective February 5, 2001. FAS 133 requires the Company to recognize all derivatives on the balance sheet at fair value. Derivatives that are not hedges must be adjusted to fair value through income. If the derivative is a hedge, depending on the nature of the hedge, changes in fair value of derivatives will either be offset against the change in fair value of the hedged assets, liabilities, or firm commitments through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a derivative's change in fair value will be immediately recognized in earnings. During the year, the Company has entered into an agreement that expires in 2007, to fix its variable-rate debt to fixed-rate debt (5.44% at February 3, 2002) on notional amounts aggregating \$51,255. The market risks associated with the agreements are mitigated because increased interest payments under the agreement resulting from reductions in LIBOR are effectively offset by reduction in interest expense under the debt obligation.

The Company is exposed to credit losses for periodic settlements of amounts due under the agreements. A charge of \$858 to interest expense was incurred in fiscal 2001 under the agreement.

INCOME TAXES - The Company uses the liability method which recognizes the amount of current and deferred taxes payable or refundable at the date of the financial statements as a result of all events that are recognized in the financial statements and as measured by the provisions of enacted tax laws.

STOCK OPTION PLAN - The Company elected to follow Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related Interpretations in accounting for its employee stock options because the alternative fair value accounting provided for under SFAS No. 123, "Accounting for Stock-Based Compensation", requires use of option valuation models that were not developed for use in valuing employee stock options. Under APB 25, because the exercise price of the Company's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized.

REVENUE RECOGNITION - Food, beverage and amusement revenues are recorded at point of service. Foreign license revenues are deferred until the Company fulfills its obligations under license agreements, which is upon the opening of the Complex. The license agreements provide for continuing royalty fees based on a percentage of gross revenues and are recognized when assured.

ADVERTISING COSTS - In accordance with SOP 93-7 "Reporting on Advertising Costs", all costs of advertising are recorded as expense in the period in which the costs are incurred or the first time the advertising takes place. For fiscal 2001 and 2000, such expenses are 3.7% and 3.3% of revenue, respectively.

TREASURY STOCK - During fiscal 1999, the Company's Board of Directors approved a plan to repurchase up to 1,000 shares of the Company's common stock. Pursuant to the plan, the Company repurchased 175 shares of its common stock for approximately \$1,846 during fiscal 1999.

NOTE 2: PROPERTY AND EQUIPMENT

Property and equipment consist of the following:

	2001	2000
Land	\$ 6,706	\$ 11,308
Buildings	34,232	56,023
Leasehold and building improvements	143,114	110,559
Games	79,673	69,970
Furniture, fixtures, and equipment	92,033	72,723
Construction in progress	3,711	17,914
	-----	-----
Total cost	359,469	338,497
Accumulated depreciation	(101,167)	(78,030)

-----	-----
\$ 258,302	\$ 260,467

F-6

NOTE 3: ACCRUED LIABILITIES

Accrued liabilities consist of the following:

	2001	2000
Payroll	\$ 2,393	\$ 1,873
Sales and use tax	1,387	1,618
Real estate tax	2,620	1,873
Other	4,685	1,686
	-----	-----
Total accrued liabilities ...	\$ 11,085	\$ 7,050

NOTE 4: LONG-TERM DEBT

In 2000, the Company secured a \$110,000 senior secured revolving credit and term loan facility. On November 19, 2001, the Company amended its senior secured revolving credit and term loan facility to allow proceeds from sale/leaseback transactions to be applied to both the revolving credit and term loans. The facility includes a five-year revolver and five and seven-year term debt. The facility agreement calls for quarterly payments of principal on the term debt through the maturity date. Borrowing under the facility bears interest at a floating rate based on LIBOR (1.77% at February 3, 2002) or, at the Company's option, the bank's prime rate (4.75% at February 3, 2002) plus, in each case, a margin based upon financial performance. The facility is secured by all assets of the Company. The facility has certain financial covenants including a minimum consolidated tangible net worth level, a maximum leverage ratio, minimum fixed charge coverage and maximum level of capital expenditures. At February 3, 2002, \$5,208 was available under this facility. The fair value of the Company's long-term debt approximates its carrying value.

The Company has entered into an agreement that expires in 2007, to change a portion of its variable rate debt to fixed-rate debt. Notional amounts aggregating \$51,255 are fixed at 5.44%. The Company is exposed to credit losses for periodic settlements of amounts due under the agreements if LIBOR decreases. A charge of \$858 to interest expense was incurred in 2001 under the agreement.

NOTE 5: INCOME TAXES

The provision for income taxes is as follows:

	2001	2000	1999
Current expense			
Federal	\$ 3,149	\$ 5,077	\$ 4,242
State and local	504	750	496
Deferred tax expense	646	1,182	986
	-----	-----	-----
Total provision for income taxes	\$ 4,299	\$ 7,009	\$ 5,724

F-7

Significant components of the deferred tax liabilities and assets in the consolidated balance sheets are as follows:

	2001	2000	1999
Accelerated depreciation	\$ 11,399	\$ 9,474	\$ 7,475
Preopening costs	(1,378)	--	--
Prepaid expenses	152	129	130
Capitalized interest costs	1,740	1,281	1,346
	-----	-----	-----
Total deferred tax liabilities	11,913	10,884	8,951
Worker's compensation	281	304	330
Leasing transactions	2,288	1,500	791
Other	(19)	184	116
	-----	-----	-----
Total deferred tax assets	2,550	1,988	1,237
	-----	-----	-----
Net deferred tax liability	\$ (9,363)	\$ (8,896)	\$ (7,714)

Reconciliation of federal statutory rates to effective income tax rates:

	2001	2000	1999
Federal corporate statutory rate	35.0 %	35.0 %	35.0 %
State and local income taxes, net of federal income tax benefit	3.1 %	2.2 %	2.1 %
Goodwill amortization and other nondeductible expenses	1.0 %	2.1 %	2.2 %
Tax credits	(4.3) %	(2.0) %	(1.9) %
Effect of change in deferred tax rate	--	(1.9) %	(2.4) %
Other	1.4 %	1.0 %	1.7 %
	-----	-----	-----
Effective tax rate	36.2 %	36.4 %	36.7 %

NOTE 6: LEASES

The Company leases certain properties and equipment under operating leases. Some of the leases include options for renewal or extension on various terms. Most leases require the Company to pay property taxes, insurance and maintenance of the leased assets. Some leases have provisions for additional percentage rentals based on revenues; however, payments of percentage rent were minimal during the three-year period ended February 3, 2002. For 2001, 2000 and 1999, rent expense for operating leases was \$19,469, \$14,295 and \$11,119, respectively. At February 3, 2002, future minimum lease payments required under operating leases are \$22,391 in 2002; \$21,892 in 2003; \$21,675 in 2004; \$21,368 in 2005; \$21,313 in 2006 and \$301,957 thereafter.

During the year ended February 3, 2002, the Company completed the sale/leaseback of two stores (Atlanta and Houston) and the corporate headquarters in Dallas. Cash proceeds of \$18,474 were received along with \$5,150 in twenty year interest bearing notes receivable at 7-7.5%. The locations were sold to non-affiliated entities. No revenue or profit was recorded at the time of the transaction.

Upon execution of the sale/leaseback transactions, property costs of \$27,360 and accumulated depreciation of \$3,832 were removed from the Company's books resulting in a loss of \$272 which was recognized in 2001 and a gain of \$713 on one facility being amortized over the term of the operating lease.

Future operating lease obligations under the lease agreements are as follows: \$2,917 in 2002, \$2,957 in 2003, \$2,997 in 2004, \$3,037 in 2005, \$3,078 in 2006 and \$50,976 thereafter. Future minimum note payments and interest income associated with the sale/leasebacks at Houston and Atlanta are as follows: \$488 in 2002, \$488 in 2003, \$488 in 2004, \$488 in 2005 and \$7,782 thereafter.

NOTE 7: COMMON STOCK

In 1995, the Company adopted the Dave & Buster's, Inc. 1995 Stock Option Plan (the "Plan") covering 675 shares of common stock. In 1997, 1998 and 2001, the Company increased the shares of common stock covered by the Plan to 1,350, 2,350 and 2,950 respectively. The Plan provides that incentive stock options may be granted at option prices not less than fair market value at date of grant (110% in the case of an incentive stock option granted to any person who owns more than 10% of the total combined voting power of all classes of stock of the Company). Non-qualified stock options may not be granted for less than 85% of the fair market value of the common stock at the time of grant and are primarily exercisable over a three to five year period from the date of the grant.

In 1996, the Company adopted a stock option plan for outside directors (the "Directors' Plan"). A total of 150 shares of common stock are subject to the Directors Plan. The options granted under the Directors' Plan vest ratably over a three year period. In 2001, the Company increased the shares of common stock subject to the Directors' Plan from 150 shares to 190 shares.

In 2000, the Company amended and restated the Dave & Buster's, Inc. 1995 Stock Incentive Plan to allow the Company to grant restricted stock awards. These restricted stock awards will fully vest at the end of the vesting period or the attainment of one or more performance targets established by the Company. Recipients are not required to provide consideration to the Company other than render service and have the right to vote the shares and to receive dividends. The Company issued in 2001 and 2000, 63.5 and 267 shares of restricted stock at a market value of \$6.45 - \$7.90 and \$6.75, respectively, which vest at the earlier of attaining certain performance targets or seven years. The total market value of the restricted shares, as determined at the date of issuance, is treated as unearned compensation and is charged to expense over the vesting period. The charge to expense for the unearned compensation was \$139 and \$243 in 2001 and 2000, respectively.

Pro forma information regarding net income and earnings per common share is required by SFAS 123, and is used as if the Company had accounted for its employee stock options under the fair value method. The fair value for these options is estimated at the date of grant using a Black-Scholes option pricing model with the following weighted-average assumptions for 2001, 2000 and 1999, respectively: risk-free interest rates of 4.59%, 6.30%, and 5.39%; dividend yields of 0.0%; volatility factors of the expected market price of the Company's common stock of .650, .740, and .494; and a weighted-average life of the option of 3.2, 2.7, and 4.4 years.

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

For purposes of pro forma disclosures, the estimated fair value of the options is amortized to expense over the option's vesting period. Because SFAS 123 requires compensation expense to be recognized over the vesting period, the impact on pro forma net income and pro forma earnings per common share as reported below may not be representative of pro forma compensation expense in future years.

The Company's pro forma information is as follows:

	2001	2000	1999
Net income, as reported.....	\$ 7,578	\$ 12,245	\$ 5,205
Pro forma net income.....	\$ 5,931	\$ 10,018	\$ 3,627
Basic net income per share, as reported.....	\$.58	\$.95	\$.40
Pro forma basic net income per share.....	\$.46	\$.77	\$.28
Diluted net income per share, as reported.....	\$.58	\$.94	\$.39

Pro forma diluted net income per share..... \$.46 \$.77 \$.27

F-9

A summary of the Company's stock option activity and related information is as follows:

	2001 Weighted- Average		2000 Weighted- Average		1999 Weighted- Average	
	Options	Exercise Price	Options	Exercise Price	Options	Exercise Price
Outstanding - beginning of year	1,932	\$14.78	1,666	\$17.24	1,145	\$16.82
Granted	1,233	\$ 6.82	674	\$ 7.49	734	\$18.10
Exercised	(6)	\$ 6.80	--	--	(59)	\$12.88
Forfeited	(234)	\$13.16	(408)	\$12.77	(154)	\$20.09
Outstanding - end of year	2,925	\$11.56	1,932	\$14.78	1,666	\$17.24
Exercisable - end of year	1,178	\$15.26	642	\$17.37	516	\$14.87
Weighted-average fair value of options granted during the year		\$ 3.28		\$ 3.96		\$ 8.36

As of February 3, 2002, exercise prices for 2,925 options ranged from \$6.10 to \$25.32. The weighted-average remaining contractual life of the options is 7.6 years.

Under a Shareholder Protection Rights Plan adopted by the Company, each share of outstanding common stock includes a right which entitles the holder to purchase one one-hundredth of a share of Series A Junior Participating Preferred Stock for seventy five dollars. Rights attach to all new shares of commons stock whether newly issued or issued from treasury stock and become exercisable only under certain conditions involving actual or potential acquisitions of the Company's common stock. Depending on the circumstances, all holders except the acquiring person may be entitled to 1) acquire such number of shares of Company common stock as have a market value at the time of twice the exercise price of each right, or 2) exchange a right for one share of Company common stock or one one-hundredth of a share of the Series A Junior Participating Preferred Stock, or 3) receive shares of the acquiring company's common stock having a market value equal to twice the exercise price of each right. The rights remain in existence until ten years after the Distribution, unless they are redeemed (at one cent per right).

NOTE 8: EARNINGS PER SHARE

The following table sets forth the computation of basic and diluted earnings per share:

	2001	2000	1999
Numerator-Net Income	\$ 7,578	\$12,245	\$ 5,205
	-----	-----	-----
Denominator:			
Denominator for basic net income per share - Weighted average shares	12,956	12,953	13,054
Effect of dilutive securities - employee stock options	60	33	160
	-----	-----	-----
Denominator for diluted earnings per share - adjusted weighted average shares	13,016	12,986	13,214
Basic net income per share	\$.58	\$.95	\$.40
Diluted net income per share	\$.58	\$.94	\$.39

Options to purchase 1,529, 1,346 and 925 shares of common stock for 2001, 2000 and 1999, respectively, were not included in the computation of diluted net income per share because the options would have been antidilutive.

NOTE 9: RELATED PARTY ACTIVITY

During 2000, the Company was party to a consulting agreement with Sandell Investments ("Sandell"), a partnership whose controlling partner is a director of the Company. Sandell advises the Company with respect to expansion and

F-10

site selection, market analysis, improvement and enhancement of the Dave & Buster's concept and other similar and related activities. Annual fees of \$125 were paid to Sandell in 2000 and 1999, the maximum fee provided for under the agreement.

The Company was a party to a sale/leaseback transaction with Cypress Equities, Inc. for its San Diego, California location, whereby the Company received \$8,000 in exchange for committing to lease payments of approximately \$6,300 over 20 years with options for renewal. A director of the Company is the managing member of Cypress Equities, Inc. Payments to Cypress Equities, Inc. in 2001 and 2000 were \$1,242 and \$349, respectively.

NOTE 10: EMPLOYEE BENEFIT PLAN

The Company sponsors a plan to provide retirement benefits under the provision of Section 401(k) of the Internal Revenue Code (the "401(k) Plan") for all employees who have completed a specified term of service. Company contributions may range from 0% to 100% of employee contributions, up to a maximum of 6% of eligible employee compensation, as defined. Employees may elect to contribute up to 20% of their eligible compensation on a pretax basis. Benefits under the 401(k) Plan are limited to the assets of the 401(k) Plan.

NOTE 11: CONTINGENCIES

The Company is subject to certain legal proceedings and claims that arise in the ordinary course of its business. In the opinion of management, the amount of ultimate liability with respect to all actions will not materially affect the consolidated results of operations or financial condition of the Company.

NOTE 12: QUARTERLY FINANCIAL INFORMATION (UNAUDITED)

Fiscal 2001	First	Second	Third	Fourth
Total revenues	\$ 88,210	\$ 83,622	\$ 81,371	\$104,806
Income before provision for income taxes	4,834	2,675	(2,936)	7,304
Net income	3,084	1,707	(1,873)	4,660
Basic net income per share	\$.24	\$.13	\$ (.14)	\$.36
Basic weighted average shares outstanding	12,953	12,954	12,956	12,957
Diluted net income per share	\$.24	\$.13	\$ (.14)	\$.36
Diluted weighted average shares outstanding ...	13,068	13,028	12,956	12,992

Fiscal 2000	First	Second	Third	Fourth
Total revenues	\$77,849	\$77,566	\$79,244	\$97,644
Income before provision for income taxes	4,565	3,397	2,368	8,924
Net income	2,890	2,150	1,499	5,706
Basic net income per share	\$.22	\$.17	\$.12	\$.44
Basic weighted average shares outstanding	12,953	12,953	12,953	12,953
Diluted net income per share	\$.22	\$.17	\$.12	\$.44
Diluted weighted average shares outstanding ...	12,960	12,954	12,974	13,077

F-11

REPORT OF INDEPENDENT AUDITORS

STOCKHOLDERS AND BOARD OF DIRECTORS
DAVE & BUSTER'S, INC.

We have audited the accompanying consolidated balance sheets of Dave & Buster's, Inc. as of February 3, 2002 and February 4, 2001, and the related consolidated statements of income, stockholders' equity and cash flows for each of the three years in the period ended February 3, 2002. These financial statements are the responsibility of the company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Dave & Buster's, Inc. at February 3, 2002 and February 4, 2001 and the consolidated results of its operations and its cash flows for each of the three years in the period ended February 3, 2002, in conformity with accounting principles generally accepted in the United States.

Ernst & Young LLP

Dallas, Texas
March 27, 2002

F-12

INDEX OF EXHIBITS

EXHIBIT NUMBER -----	DESCRIPTION -----
3.1	Restated Articles of Incorporation of the Company. (1)
3.2	Bylaws of the Company. (1)
10.1	Revolving Credit and Term Loan Agreement, dated June 30, 2000, among the Company and its subsidiaries, Fleet National Bank (as agent) and the financial institutions named therein. (2)
10.1.1	Amendment No. 1 to Revolving Credit and Term Loan Agreement dated May 31, 2001 by and among the Company and its subsidiaries, Fleet National Bank (as agent) and the financial institutions named therein. (7)
10.1.2	Amendment No. 2 to Revolving Credit and Term Loan Agreement dated November 19, 2001 by and among the Company and its subsidiaries, Fleet National Bank (as agent) and the financial institutions names therein. (8)
10.2 - 10.6	Intentionally omitted.
10.7	Rights Agreement between the Company and Rights Agent, dated June 16, 1995. (1)

- 10.8 1995 STOCK OPTION PLAN (AS AMENDED AND RESTATED APRIL 26, 2000). (3)
- 10.9 STOCK OPTION PLAN FOR OUTSIDE DIRECTORS. (4)
- 10.11 EMPLOYMENT AND EXECUTIVE RETENTION AGREEMENTS FOR CO-CHIEF EXECUTIVE OFFICERS, DATED JUNE 16, 1995. (5)
- 10.12 FORM OF INDEMNITY AGREEMENTS WITH EXECUTIVE OFFICERS AND DIRECTORS. (6)
- 10.13 Intentionally Omitted.
- 10.14 EXECUTIVE RETENTION AGREEMENT FOR STERLING R. SMITH DATED JUNE 11, 2001 (8)
- 10.15 Intentionally Omitted.
- 10.16 Agreement of Sale and Purchase dated October 1, 2001 between the Company, as seller, and General Electric Capital, Business Asset Funding Corporation, as purchaser, for the Company's corporate headquarters in Dallas, Texas. (8)
- 10.17 Lease Agreement dated October 1, 2001 between General Electric Capital Business Asset Funding Corporation, as landlord, and the Company, as tenant for the Company's corporate headquarters in Dallas, Texas. (8)
- 10.18 Agreement of Sale and Purchase dated November 12, 2001 between D&B Realty Holding, Inc., as seller and KAZA I, Ltd. As purchaser for Houston, Texas property. (9)
- 10.19 Lease Agreement dated December 14, 2001 between KAZA I L.P. as landlord, and Dave & Buster's I, L.P. as tenant for Houston, Texas property. (9)

- 10.20 Agreement of Sale and Purchase dated as of December 17, 2001 between D&B Realty Holding, Inc., as seller, and Landfair, LLC as purchaser for Marietta, Georgia property. (9)
- 10.21 Lease Agreement dated December 17, 2001 between Landfair LLC, as landlord, and Dave & Buster's I, L.P., as tenant, for Marietta, Georgia property. (9)
- 10.22 EXECUTIVE RETENTION AGREEMENT DATED JUNE 7, 2001 BETWEEN THE COMPANY AND JOHN S. DAVIS. (9)
- 10.23 EXECUTIVE RETENTION AGREEMENT DATED DECEMBER 3, 2001 BETWEEN THE COMPANY AND W. C. HAMMETT, JR. (9)
- 21.1 Subsidiaries of the Company. (9)
- 23 Independent Auditors' Consent. (9)

-
- (1) Filed as an Exhibit to the registrant's Form 10-Q for the 13-week period ended April 30, 1995 and incorporated herein by reference.
 - (2) Filed as an Exhibit to the registrant's Form 10-Q for the 13-week period ended July 30, 2000 and incorporated herein by reference.
 - (3) Filed as an Exhibit to the registrant's Proxy Statement dated April 28, 2000 and incorporated herein by reference.

- (4) Filed as an Exhibit to the registrant's Form 10-K for the 52 week period ended February 1, 1997 and incorporated herein by reference.
- (5) Filed as an Exhibit to the registrants Form 10-K for the fiscal year ended February 4, 2001.
- (6) Filed as an Exhibit to the registrant's Form 10 filed April 11, 1995 and incorporated herein by reference.
- (7) Filed as an Exhibit to the registrant's Form 10-Q for the 13 week period ended August 5, 2001.
- (8) Filed as an Exhibit to the registrant's Form 10-Q for the 13 week period ended November 4, 2001.
- (9) Filed herewith.

AGREEMENT OF SALE AND PURCHASE

by and between

D & B REALTY HOLDING, INC.,

a Missouri corporation,

as Seller

and

KAZA I, LTD.,

a Texas limited partnership

as Purchaser

Houston, Texas

TABLE OF CONTENTS

	PAGE
ARTICLE I. Sale and Purchase: Property.....	1
Section 1.1 Sale and Purchase	1
ARTICLE II. Consideration.....	2
Section 2.1 Purchase Price & Financing	2
Section 2.2 Earnest Money	2
ARTICLE III. Survey.....	4
Section 3.1 Survey	4
ARTICLE IV. Title.....	4
Section 4.1 Title Commitment	4
ARTICLE V. Inspection.....	5
Section 5.1 Inspection Period	5
Section 5.2 Document Review	6
Section 5.3 Inspection Obligations	7
Section 5.4 Right of Termination	8
Section 5.5 Property Conveyed "AS IS"	9
Section 5.6 Investigative Studies	12
Section 5.7 Purchaser Represented by Counsel	12
ARTICLE VI. Closing.....	12
Section 6.1 Closing Date	12
Section 6.2 Closing Matters	13
Section 6.3 Closing Costs	14
Section 6.4 Real Estate Commission	15
Section 6.5 Conditions Precedent to Seller's Obligations	15
Section 6.6 Conditions Precedent to Purchaser's Obligations	15
ARTICLE VII. Remedies.....	16
Section 7.1 Seller's Remedies	16
Section 7.2 Purchaser's Remedies	16
Section 7.3 Attorneys' Fees	17
Section 7.4 Disposition of Earnest Money	18
ARTICLE VIII. Representations, Warranties, and Covenants.....	18
Section 8.1 Purchaser's Representations and Warranties	18
Section 8.2 Seller's Representations and Warranties	18
Section 8.3 Seller's Covenants	20
Section 8.4 Survival of Representations and Warranties	22
Section 8.5 Knowledge Standard	22

ARTICLE IX. Condemnation.....	22
Section 9.1 Condemnation	22
ARTICLE X. Risk of Loss.....	23
Section 10.1 Risk of Loss	23
Section 10.2 Loss	23
Section 10.3 Non-Material Loss	25
Section 10.4 Delay in Completion of Repairs	25
ARTICLE XI. Miscellaneous.....	26
Section 11.1 Entire Agreement	26
Section 11.2 Agreement Binding on Parties; Assignment	26
Section 11.3 Effective Date	26
Section 11.4 Notice	26
Section 11.5 Time of the Essence	28
Section 11.6 Place of Performance	28
Section 11.7 Currency	28
Section 11.8 Section Headings	28
Section 11.9 Obligations	29
Section 11.10 Business Days	29
Section 11.11 No Recordation	29
Section 11.12 Multiple Counterparts	29
Section 11.13 Severability	29
Section 11.14 Taxpayer ID	29
Section 11.15 Section 1031 Exchange	30

Exhibits

- Exhibit A - Legal Description of Land
- Exhibit B - Deed
- Exhibit C - Bill of Sale
- Exhibit D - Certificate of Non-Foreign Status
- Exhibit E - Assignment of Warranties
- Exhibit F - Lease
- Exhibit G - Note

AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT OF SALE AND PURCHASE (this "AGREEMENT") is made by and between D & B REALTY HOLDING, INC., a Missouri corporation (the "SELLER"), and KAZA I, LTD., a Texas limited partnership (the "PURCHASER").

W I T N E S S E T H:

WHEREAS, Seller desires to sell and Purchaser desires to purchase the property described in Section 1.1 below, on the terms and conditions hereinafter set forth;

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

ARTICLE I.
SALE AND PURCHASE: PROPERTY

Section 1.1 Sale and Purchase.

Seller agrees to sell and convey unto Purchaser, and Purchaser agrees to purchase and accept from Seller, subject to the Permitted Exceptions (as defined in Section 4.1(c)) and the terms, covenants, conditions, and provisions herein set forth, the following:

- (a) All of that certain land more particularly described on Exhibit A attached hereto (the "LAND"), including all structures, improvements, and fixtures (the "IMPROVEMENTS") thereon. The Improvements consist of an approximately 53,111 square foot, single story "Dave & Buster's" entertainment complex. The Land and the Improvements are sometimes referred to herein

collectively as the "REAL PROPERTY";

- (b) All right, title, and interest, if any, of Seller, in and to any land lying in the bed of any dedicated street, road, or access way, opened or proposed, in front of, at a side of or adjoining the Real Property (the "PROPERTY RIGHTS");
- (c) All right, title, and interest of Seller, reversionary or otherwise, in and to all easements in or upon the Land and all other rights and appurtenances belonging or in anywise pertaining thereto, if any (the "APPURTENANCES");
- (d) Any and all equipment, machinery, and other items of personal property owned by Seller and presently affixed or attached to, placed or situated upon the Real Property and used in connection with the ownership,

1

operation and occupancy of the Real Property, but specifically excluding any items of personal property owned by the Tenant (as defined in Section 6.2 (viii)) and/or any third party (the "PERSONALTY");

- (e) All right, title, and interest, if any, of Seller in and to any and all transferable licenses, permits, certificates, approvals, authorizations, variances, and consents (the "PERMITS") issued or granted by governmental or quasi-governmental bodies, officers, or authorities with respect to the ownership of the Real Property;
- (f) All warranties and guaranties covering any of the Improvements, if any (the "WARRANTIES");
- (g) Any service contracts, management agreements, and maintenance contracts encumbering the Land and designated by Seller during the Inspection Period (collectively, the "SERVICE CONTRACTS");
- (h) Seller's interest in all plans, specifications, drawings, reports, studies, and other similar matters, relating to the Land and in the possession of Seller, but only to the extent assignable (the "PLANS").

The items described in (a) through (h) of this Section 1.1 are hereinafter collectively called the "PROPERTY".

ARTICLE II.
CONSIDERATION

Section 2.1 Purchase Price & Financing.

- (a) The purchase price (the "PURCHASE PRICE") to be paid by Purchaser to Seller for the sale and conveyance of the Property is Eight Million Seven Hundred Seventy-Seven Thousand and No/100 Dollars (\$8,777,000), which is payable to Seller at the closing of the transaction contemplated hereby (the "CLOSING") by wire transfer and which funds must be delivered in a manner to permit the Closing Agent (defined in Section 2.2) to deliver good funds to the Seller or its designee on the Closing Date (defined in Section 6.1).
- (b) Notwithstanding the foregoing, \$2,633,100 of the Purchase Price shall be delivered at Closing in the form of a promissory note (the "NOTE") in substantially the form attached hereto as Exhibit G.

- (a) It is a condition precedent to the effectiveness of this Agreement that within five (5) days of the execution of this Agreement by Purchaser, Purchaser shall deposit with Hexter-Fair Title Company, 8333 Douglas Avenue, Suite 130, Dallas, Texas 75225, Attn: Carol Erick (the "CLOSING AGENT"), by wire transfer or delivery of a cashier's check, immediately available federal funds in the amount of Twenty Five Thousand Dollars (\$25,000) (the "INITIAL EARNEST MONEY"). On or before the Inspection Period Expiration Date, unless this Agreement has been properly terminated by Purchaser in accordance with Section 5.4 hereof, Purchaser shall deliver to Closing Agent an additional Twenty Five Thousand Dollars (\$25,000) (the "ADDITIONAL EARNEST MONEY") to be held as additional earnest money. The Initial Earnest Money and the Additional Earnest Money, along with any accrued interest thereon, are collectively referred to herein as the "EARNEST MONEY."
- (b) On the Closing Agent's receipt of the Earnest Money, the Closing Agent shall deposit such Earnest Money into an interest-bearing money market account maintained at a federally insured bank or savings and loan association located in Dallas County, Texas. Such account shall have no penalty for early withdrawal, and Purchaser agrees and acknowledges that Seller shall have no responsibility or liability for any loss of the Earnest Money or any portion thereof. If any of the Earnest Money to be delivered pursuant to Section 2.2(a) is not timely delivered by Purchaser to the Closing Agent, Seller may terminate this Agreement by delivering written notice of such termination to Purchaser, and any of the Earnest Money previously delivered to Closing Agent, if any, shall be delivered to Seller as liquidated damages. Upon said termination, (i) neither Seller nor Purchaser shall have any further obligation or liability to the other hereunder, except as provided in Sections 5.3. and 6.4 hereof, and (ii) Purchaser shall deliver to Seller all of the Documents and Purchaser's Information (as defined in Section 5.2(c)). Notwithstanding anything to the contrary contained elsewhere in this Agreement, \$100.00 of the Earnest Money shall serve as independent consideration for this Agreement (the "INDEPENDENT CONSIDERATION"), and shall be non-refundable for any reason. If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Earnest Money shall be credited against the Purchase Price at Closing. All interest earned shall be reported to the Internal Revenue Service as income of Purchaser and Purchaser shall promptly execute all forms reasonably requested by the Closing Agent with respect thereto.
- (c) The balance of the Purchase Price, as adjusted by the prorations and credits specified herein, less the Earnest Money and less the amount of the Note, shall be paid on the Closing Date in the manner set forth in Section 6.2.

Seller shall deliver to Purchaser, within ten (10) days after the Effective Date (as defined in Section 11.3), a copy of the as-built survey (the "SURVEY") of the Real Property in Seller's possession. Purchaser shall be solely responsible for updates to the Survey.

ARTICLE IV.
TITLE

Section 4.1 Title Commitment.

- (a) Delivery. Within ten (10) days after the Effective Date, Seller shall deliver to Purchaser a copy of its owner's title policy covering the Property. Seller shall cause Fidelity National Title Insurance Company (the "TITLE COMPANY"), acting through the Closing Agent, to furnish to Purchaser a title commitment (the "COMMITMENT") along with true and complete copies of all documents referred to in the Commitment, including, without limitation, plats, deeds, restrictions and easements, by the terms of which the Title Company agrees to issue to Purchaser at Closing a Texas Standard Coverage Owner's Policy of Title Insurance (the "TITLE POLICY") in the amount of the Purchase Price and insuring Purchaser's fee simple title to the Real Property to be good and indefeasible, subject to the Permitted Exceptions and the other terms of the Title Policy.
- (b) Objections and Cure. If the Title Commitment or Survey or their updates disclose exceptions to title or any other matter reasonably objectionable to Purchaser, Purchaser shall so notify Seller in writing (the "OBJECTION NOTICE") on or before the fifteenth (15th) day following the date of the last to be received of the Title Commitment and Survey, and Seller shall have fifteen (15) days from the date of Seller's actual receipt of the Objection Notice in which it may, but shall have no obligation to have each such objectionable exception to title or Survey removed or correct each such other matter, in each case to the reasonable satisfaction of Purchaser; provided, however, that Seller shall pay off and discharge the following (collectively "Dischargeable Liens"): (a) all mortgage liens and deeds of trust encumbering the Property or any portion thereof; and (b) all lien claims if liquidated and uncontested (including, without limitation, the liens shown on Schedules B and C of the Commitment, other than taxes for the year of Closing and subsequent years), and Seller covenants and agrees to pay off and discharge all such mortgage liens, deeds of trust and other such liens at Closing. If, within the time specified, Purchaser does

4

not deliver an Objection Notice, all title and survey matters shall be deemed approved (other than its objections relating to the Dischargeable Liens). If, within the time specified, Seller does not have each such objectionable exception removed or corrected, Purchaser must, prior to the Inspection Period Expiration Date (as hereinafter defined), as its sole and exclusive remedy, either (i) terminate this Agreement, in which event this Agreement, without further action of the parties, shall become null and void and neither party shall have any further rights or obligations under this Agreement, except in accordance with Sections 5.3 and 6.4, or (ii) elect to accept title to the Property as it then exists, without reduction to the Purchase Price. If Purchaser fails to timely make either such election, Purchaser shall be deemed to have elected option (ii).

Notwithstanding anything to the contrary herein, the time period within which Purchaser must provide its Objection Notice and Seller may cure such objections must be completed prior to the Inspection Period Expiration Date. In other words, Purchaser shall have no right to terminate this Agreement under this Section 4.1(b) after the Inspection Period Expiration Date, notwithstanding anything to the contrary herein contained.

- (c) Permitted Exceptions. As used in this Agreement, the term "PERMITTED EXCEPTIONS" shall mean all matters either shown on the Survey or in the Title Commitment (other than the Dischargeable Liens), and all matters which Purchaser has accepted or has been deemed to accept. Seller has no obligation to ensure that the Title Company will provide any endorsements to the Title Policy, including, without limitation, any deletion of the printed survey exception, all of which, if Purchaser elects to obtain any such endorsements, shall be Purchaser's responsibility and shall be at Purchaser's expense. Notwithstanding any provision hereof, Seller shall have until Closing to satisfy and/or remove all Schedule C items and shall be obligated to satisfy and/or remove same
- (d) Termination. In the event of termination of this Agreement pursuant to this Section 4.1, upon Purchaser's delivery of the Documents and the Purchaser's Information (as those terms are defined in Article V) to Seller, the Earnest Money shall be delivered to Purchaser, except for the Independent Consideration, which shall be paid to Seller, and thereafter neither party shall have any further rights or obligations hereunder, except for the rights and obligations arising pursuant to Sections 5.3 and 6.4.

ARTICLE V.
INSPECTION

Section 5.1 Inspection Period.

Seller, subject to the provisions of the Lease, shall permit Purchaser and its authorized agents and representatives to enter upon the Real Property at all

5

reasonable times during normal business hours to inspect and conduct reasonably necessary tests. After the Effective Date, Purchaser, at Purchaser's expense, shall also be entitled to have conducted on its behalf, subject to the operations of the restaurant, inspections of the Improvements and Personalty. Such entry and inspections may be conducted only during the period (the "INSPECTION PERIOD") commencing on the Effective Date and ending at 5:00 p.m., Dallas, Texas time on the date (the "INSPECTION PERIOD EXPIRATION DATE") that is twenty-five (25) days following the Effective Date; provided, however, that so long as this Agreement has not been terminated, Purchaser shall have the right, subject to the operations of the restaurant, to enter upon the Real Property at all reasonable times during normal business hours subsequent to the Inspection Period Expiration Date and prior to the Closing for the purposes of continuing its inspection of the same so long as Purchaser complies with each of the provisions of this Agreement, including, without limitation, the provisions of this Article V relating to such entry and inspection. Notwithstanding the foregoing, in no event shall such entry and inspection subsequent to the Inspection Period Expiration Date serve to extend Purchaser's right to terminate this Agreement on or before the Inspection Period Expiration Date as provided in Section 5.4 hereof. Purchaser shall notify Seller, in writing, of its intention, or the intention of its

agents or representatives, to enter the Real Property at least twenty-four (24) hours prior to such intended entry, and notify Seller of any tests to be conducted thereon. Purchaser shall bear the cost of all such inspections and tests. At Seller's option, Seller may be present for any inspection or test.

Section 5.2 Document Review.

- (a) Documents. Within ten (10) days after the Effective Date, Seller shall deliver to Purchaser the following, if in the possession of Seller (collectively, the "DOCUMENTS"):
 - (i) copies of any Plans;
 - (ii) to the extent allowed by the author, copies of all existing soil, engineering, architectural, and environmental reports covering the Property in Seller's possession;
 - (iii) copies of all Service Contracts, if any;
 - (iv) a list of the Personalty to be conveyed, if any; and
 - (v) copies of all Permits in Seller's possession.
- (b) Proprietary Information. Purchaser acknowledges that any and all of the Documents are proprietary and confidential in nature and will be delivered

6

to Purchaser solely to assist Purchaser in determining the feasibility of purchasing the Property. Purchaser agrees not to disclose the contents of the Documents to any party outside of Purchaser's organization except to certain of its attorneys, accountants, lenders, or investors (collectively, the "PERMITTED OUTSIDE PARTIES"). Purchaser further agrees that the Documents shall be disclosed and exhibited only to those persons within Purchaser's organization or to those Permitted Outside Parties who are responsible for determining the feasibility of Purchaser's acquisition of the Property. In permitting the Permitted Outside Parties to review the Documents or other information to assist Purchaser, Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third party benefits or relationships of any kind, either express or implied, have been offered, intended or created by Seller and any such claims are expressly rejected by Seller and waived by Purchaser and the Permitted Outside Parties, for whom, by its execution of this Agreement, Purchaser is acting as an agent with regard to such waiver.

- (c) Return of Documents. Purchaser shall return all of the Documents, any and all copies Purchaser has made of the Documents, and all copies of any studies, reports, or test results obtained by Purchaser in connection with its inspection of the Property (collectively, the "PURCHASER'S INFORMATION") on the earlier to occur of (i) such time as Purchaser determines that it shall not acquire the Property, or (ii) such time as this Agreement is terminated for any reason.
- (d) No Representation or Warranty by Seller. Purchaser hereby acknowledges that Seller has not made and does not make any warranty or representation regarding the truth, accuracy, or completeness of the Documents or the source(s) thereof, and that Seller has not undertaken any independent investigation as to the truth, accuracy, or completeness of the Documents and is providing the Documents solely as an accommodation to

Purchaser. Seller expressly disclaims and Purchaser waives any and all liability for representations or warranties, express or implied, statements of fact, and other matters contained in the Documents, or for any omissions from the Documents, or in any other written or oral communications transmitted or made available to Purchaser. Purchaser shall rely solely upon its own investigation with respect to the Property, including, without limitation, the Property's physical, environmental, or economic condition, compliance or lack of compliance with any ordinance, order, permit, or regulation or any other attribute or matter relating thereto.

Section 5.3 Inspection Obligations.

- (a) Purchaser's Responsibilities. In conducting any inspections, investigations, examinations, or tests of the Property, Purchaser and its

7

agents and representatives shall: (i) not interfere with the operation and maintenance of the Property; (ii) not damage any part of the Property or any personal property; (iii) not injure or otherwise cause bodily harm to Seller or its agents, guests, invitees, contractors and employees; (iv) maintain commercial general liability (occurrence basis) insurance in terms and amounts reasonably satisfactory to Seller covering any accident arising in connection with the presence of Purchaser, its agents, and its representatives on the Property, and shall deliver a certificate of insurance verifying such coverage (and naming Seller as an additional insured) to Seller prior to entry upon the Property; (v) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (vi) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (vii) fully restore the Land and the Improvements to the condition in which the same were found before any such inspection or tests were undertaken; (viii) not reveal or disclose any information obtained during the Inspection Period concerning the Property and the Documents to anyone outside Purchaser's organization, except in accordance with the confidentiality standards set forth in Section 5.2(b) hereof, and (ix) deliver to Seller a copy of all Purchaser's Information.

- (b) PURCHASER'S AGREEMENT TO INDEMNIFY. PURCHASER SHALL INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL LIENS, CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, AND EXPENSES (INCLUDING REASONABLE LEGAL FEES AND EXPENSES) ARISING OUT OF PURCHASER'S INSPECTIONS OR TESTS OR ANY VIOLATION OF THE PROVISIONS OF THIS SECTION 5.3 EXCEPT AS MAY BE CAUSED BY THE NEGLIGENCE OF SELLER, ITS EMPLOYEES, AGENTS OR INVITEES. THIS INDEMNITY SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT.

Section 5.4 Right of Termination.

If, during the Inspection Period, Purchaser shall, for any reason, in Purchaser's sole discretion, judgment, and opinion, be dissatisfied with any aspect of the Property or any item examined by Purchaser pursuant to this Agreement, Purchaser shall be entitled, as its sole remedy, to terminate this Agreement by giving written notice to Seller on or before the Inspection Period Expiration Date (but no later than 3:00 p.m., Dallas, Texas time on the Inspection Period Expiration Date), whereupon all of the provisions of this Agreement (except Sections 5.3 and 6.4) shall terminate. Upon such termination, neither Seller nor Purchaser shall have any further obligation or liability to the other hereunder, except as provided in Sections 5.3 and 6.4 hereof, and upon Purchaser's delivery to Seller of the Documents and Purchaser's Information, the Earnest Money shall

8

be returned to Purchaser, less the Independent Consideration which shall be paid to Seller.

Section 5.5 Property Conveyed "AS IS".

- (a) DISCLAIMER OF REPRESENTATIONS AND WARRANTIES BY SELLER. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.2 HEREOF, SELLER HAS NOT MADE AND IS NOT NOW MAKING, AND SELLER SPECIFICALLY DISCLAIMS AND PURCHASER WAIVES, ANY WARRANTIES, REPRESENTATIONS, OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS OR GUARANTIES AS TO (I) MATTERS OF TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE SET FORTH IN THE DEED DESCRIBED IN SECTION 6.2(A) (IV) TO BE DELIVERED AT CLOSING); (II) ENVIRONMENTAL MATTERS RELATING TO THE PROPERTY OR ANY PORTION THEREOF; (III) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND EARTHQUAKE FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE EARTHQUAKES; (IV) WHETHER AND THE EXTENT TO WHICH, THE REAL PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (V) DRAINAGE; (VI) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING; (VII) ZONING TO WHICH THE REAL PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT; (VIII) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS, AND ELECTRIC; (IX) USAGES OF ADJOINING PROPERTY; (X) ACCESS TO THE REAL PROPERTY OR ANY PORTION THEREOF; (XI) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY INCOME,

9

EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS, OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF; (XII) THE PRESENCE OF HAZARDOUS SUBSTANCES IN (AS DEFINED IN SECTION 5.5(C)) IN ON, UNDER, OR IN THE VICINITY OF THE REAL PROPERTY; (XIII) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS, OR LAWS, BUILDING FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; (XIV) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS; (XV) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE REAL PROPERTY; (XVI) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE REAL PROPERTY; (XVII) THE EXISTENCE OF VESTED LAND USE, ZONING, OR BUILDING ENTITLEMENTS AFFECTING THE REAL PROPERTY; (XVIII) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (PURCHASER AFFIRMING THAT PURCHASER HAS NOT RELIED ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT SELLER MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE); OR (XIX) TAX CONSEQUENCES (INCLUDING, BUT NOT LIMITED TO, THE AMOUNT, USE, OR PROVISIONS RELATING TO ANY TAX CREDITS).

- (b) SALE "AS IS". PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF ITS AGENTS AND ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE. PURCHASER REPRESENTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED, AND SOPHISTICATED PURCHASER OF REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF PURCHASER'S CONSULTANTS IN PURCHASING THE PROPERTY. PURCHASER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS PURCHASER

DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME. UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INSPECTIONS AND INVESTIGATIONS AND HEREBY WAIVES ANY CLAIM PURCHASER MAY HAVE, NOW OR IN THE FUTURE, IN

10

CONNECTION WITH ANY SUCH ADVERSE MATTERS, INCLUDING, WITHOUT LIMITATION, ANY RIGHT OF CONTRIBUTION. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS," WITH ALL FAULTS. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER, ANY AGENT OF SELLER OR ANY THIRD PARTY. THE TERMS AND CONDITIONS OF THIS SECTION 5.5 SHALL EXPRESSLY SURVIVE THE CLOSING, NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND SHALL BE INCORPORATED INTO THE DEED. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN. PURCHASER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS THE "AS IS" NATURE OF THIS SALE AND ANY FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTERS THAT MAY BE ASSOCIATED WITH THE PROPERTY. PURCHASER HEREBY EXPRESSLY WAIVES ANY CLAIM OF FRAUDULENT INDUCEMENT. PURCHASER HAS FULLY REVIEWED THE DISCLAIMERS, ASSUMPTIONS, AND WAIVERS SET FORTH IN THIS AGREEMENT WITH ITS COUNSEL AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS ARTICLE V AND IN PARTICULAR THIS SECTION 5.5 ARE AN INTEGRAL PART OF THIS AGREEMENT AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO PURCHASER FOR THE PURCHASE PRICE WITHOUT SUCH PROVISIONS.

- (c) Hazardous Substances Defined. For purposes hereof, "HAZARDOUS SUBSTANCES" means any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601 et seq.), as amended, or the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.), as amended, or any other federal, state, or local law, ordinance, rule, or regulation applicable to the Property, or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated

11

biphenyls (pcbs), radon gas, urea formaldehyde, asbestos, lead or electromagnetic waves.

Section 5.6 Investigative Studies.

As additional consideration for the transaction contemplated herein, Purchaser agrees that it will provide to Seller, immediately following the receipt of same by Purchaser, copies of any and all reports, tests, or studies involving structural or geologic conditions or environmental, hazardous waste, or Hazardous Substances contamination of the Property which reports, tests or studies shall be addressed to both Seller and Purchaser at no cost to Seller; provided, however, Purchaser shall have no obligation to cause any such tests or studies to be performed on the Property. In the event that such reports, tests or studies indicate that additional investigation may be required, either Seller or Purchaser may request (at the cost of the party requesting same) that such additional investigation be completed,

provided that neither Seller nor Purchaser shall be obligated to undertake any such additional investigation and either Purchaser or Seller shall be entitled to terminate this Agreement rather than proceed with any such additional investigation. No deadline or time period in this Agreement shall be extended by virtue of any such additional investigation. Seller hereby acknowledges that Purchaser has not made and does not make any warranty or representation regarding the truth or accuracy of any such studies or reports and has not undertaken any independent investigation as to the truth or accuracy thereof. Purchaser shall have no liability or culpability of any nature as a result of having provided such information to Seller or as a result of Seller's reliance thereon. Purchaser shall be responsible for any and all costs, claims, damages, and liabilities caused by any testing performed or required by Purchaser.

Section 5.7 Purchaser Represented by Counsel.

Purchaser hereby represents and warrants to Seller that: (i) Purchaser is not in a significantly disparate bargaining position in relation to Seller; (ii) Purchaser is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (iii) Purchaser is purchasing the Property for business, commercial, investment, or other similar purpose and not for use as Purchaser's residence.

ARTICLE VI.
CLOSING

Section 6.1 Closing Date.

The Closing shall be held in the offices of Closing Agent, or such other location as may be mutually agreed upon by Seller and Purchaser, at 10:00 a.m. (Dallas, Texas time) on the thirtieth (30th) day following the Inspection Period Expiration

12

Date (the "CLOSING DATE"), or at such other time as mutually agreed by Seller and Purchaser.

Section 6.2 Closing Matters.

- (a) Seller's Deliveries. At Closing, expressly conditioned upon Purchaser's performance of its obligations under Section 6.2(b), Seller shall deliver:
- (i) possession of the Property, subject to the Permitted Exceptions, as modified herein;
 - (ii) to the extent available and in Seller's possession, copies of all Permits;
 - (iii) an executed and acknowledged special warranty deed (the "DEED") in the form set forth in Exhibit B conveying the Real Property subject to the Permitted Exceptions;
 - (iv) a bill of sale in substantially the form of Exhibit C (the "BILL OF SALE"), executed and acknowledged by Seller, conveying without warranty the Personalty;
 - (v) an executed Assignment and Assumption of Warranties in substantially the form of Exhibit E (the "ASSIGNMENT OF WARRANTIES");
 - (vi) a certificate of Seller respecting the non-foreign status of Seller in the form set forth in Exhibit D attached hereto;
 - (vii) the originals of the Warranties, Service Contracts, Plans and Permits in Seller's possession;
 - (viii) an executed Lease between Purchaser and Dave & Buster's I, L.P. ("TENANT") in the form attached hereto as Exhibit F (the "LEASE"); and

- (ix) such other documents as may be reasonably required by Closing Agent, including, but not limited to, documents evidencing the authority of Seller to consummate the sale of the Property in accordance with this Agreement and designating those persons authorized to execute and deliver all necessary documents at Closing.

13

- (b) Purchaser's Deliveries. At Closing, Purchaser shall deliver:
 - (i) the remaining funds for the Purchase Price to the Closing Agent, sent by wire transfer of immediately available federal funds to the account designated by Closing Agent and available for disbursement no later than 11:00 a.m. (Dallas, Texas time) on the Closing Date;
 - (ii) the Note, duly executed by Purchaser;
 - (iii) the Assignment of Warranties, duly executed and acknowledged by Purchaser;
 - (iv) the Lease, duly executed and acknowledged by Purchaser; and
 - (v) such other documents as may be reasonably required by Seller or Closing Agent, including, but not limited to, a certified copy of documents evidencing the authority of Purchaser to consummate the purchase of the Property in accordance with this Agreement and designating those persons authorized to execute and deliver all necessary documents at Closing.
- (c) Prorations. Ad valorem taxes (whether for real estate or personal property) against the Real Property will be prorated at Closing as of the Closing Date based on the tax bills for the year of the Closing. Seller shall pay to Purchaser at Closing (or credit the Purchase Price) the portion of the taxes on the Real Property from the beginning of the current year to the Closing Date. If Closing occurs before that year's tax bills are available, the proration will be based on the latest tax rate applied to 90% of the Purchase Price.
- (d) Preparation of Documents. All of the documents that are not attached hereto as exhibits to be executed at Closing shall be in form prepared to the reasonable satisfaction of Seller and Purchaser.

Section 6.3 Closing Costs.

Except as otherwise provided in Section 7.3, each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction that is the subject of this Agreement. Any escrow fee charged by the Title Company shall be paid equally by Purchaser and Seller. Any transfer or documentary stamp tax, or similar charge (the "TRANSFER TAXES"), shall be paid by Seller at Closing. Except as otherwise expressly and specifically provided to the contrary in this Section 6.3 or otherwise in this Agreement, Seller shall pay

14

only the filing fees for recording the Deed, the basic premium for the Title Policy, one-half (-1/2) of the escrow fees, and the Transfer Taxes. Except as otherwise expressly provided to the contrary in this Section 6.3 or otherwise in this Agreement, Purchaser shall pay any and all other costs, including, without limitation, one-half (-1/2) of the escrow fees, all premiums associated with extended coverage or any endorsements or modifications to the Title Policy, the costs of any updated Survey, and all other closing costs of any nature and costs of any inspections or tests Purchaser authorizes or conducts.

Section 6.4 Real Estate Commission.

Seller agrees to pay, at Closing, to United Country Timberline Realty, Inc. and Staubach Retail Services, Inc. (collectively, the "BROKERS"), a real estate commission in accordance with separate written contracts, but only in the event of a Closing in strict accordance with this Agreement. The payment of the aforementioned commission to the Brokers by Seller shall fully satisfy any obligations of Seller for the payment of any real estate commission hereunder or in connection herewith. Seller and Purchaser each represent and warrant to the other that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby (other than as described above in this Section 6.4), and each agrees to and does hereby indemnify and hold the other harmless against the payment of any commission to any person or entity (other than as described above in this Section 6.4) claiming by, through or under Seller or Purchaser, as applicable. This indemnification shall extend to any and all claims, liabilities, costs, and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive the Closing.

Section 6.5 Conditions Precedent to Seller's Obligations.

Seller's obligation to consummate Closing hereunder is expressly conditioned on the satisfaction, at or before the Closing Date or such earlier date as is specified below, of each of the following conditions (any one or more of which may be waived, in whole or in part by Seller, at Seller's option):

- (a) All of the representations and warranties of Purchaser contained in this Contract shall have been true and correct when made and shall be true and correct on the Closing Date with the same effect as if made on and as of such date.
- (b) Purchaser shall have performed, observed and complied with all covenants, agreements and conditions required by this Contract to be performed, observed and complied with on its part prior to or as of the Closing.

Section 6.6 Conditions Precedent to Purchaser's Obligations.

Purchaser's obligations hereunder (including, without limitation, its obligation to purchase and accept the

15

Property) are expressly conditioned on the satisfaction, at or before the Closing Date or such earlier date as is specified below, of each of the following conditions (any one or more of which may be waived, in whole or in part, by Purchaser at Purchaser's option):

- (a) All of the representations and warranties of Seller contained in this Contract shall have been true and correct when made, and shall be true and correct on the Closing Date with the same effect as if made on and as of such date.
- (b) Seller shall have performed, observed and complied with all covenants, agreements and conditions required by this Contract to be performed, observed and complied with on its part prior to or as of the Closing hereof.
- (c) The physical condition of the Property shall be substantially the same on the Closing Date as on the Effective Date.
- (d) As of Closing, no proceedings shall be pending or threatened which could or would involve the change, redesignation, redefinition or other modification of the zoning classification (if any) of (or any zoning, building or environmental code requirements

applicable to) the Property, or any portion thereof.

ARTICLE VII.
REMEDIES

Section 7.1 Seller's Remedies.

Other than the matters provided in Sections 5.3 and 6.4 hereof, in the event Purchaser falls to perform any of its obligations pursuant to this Agreement for any reason except failure by Seller to perform hereunder, Seller shall be entitled to terminate this Agreement and recover the Earnest Money as liquidated damages and not as penalty, in full satisfaction of claims against Purchaser hereunder. Seller and Purchaser agree that the Seller's damages resulting from Purchaser's default are difficult, if not impossible, to determine and the Earnest Money is a fair and reasonable estimate of those damages which has been agreed to in an effort to cause the amount of said damages to be certain.

Section 7.2 Purchaser's Remedies.

In the event Seller fails to perform its obligations pursuant to this Agreement (other than a breach of representation or warranty) for any reason except failure by Purchaser to perform hereunder, Purchaser may elect, as its sole remedies, to (a) terminate this Agreement by giving Seller timely written notice of such election prior to or at Closing or (b) enforce specific performance of the

16

obligations of Seller and, upon delivery of the Documents and the Purchaser's Information to Seller, recover the Earnest Money in accordance with Section 7.4, less the Independent Consideration which shall be paid to Seller. In the event of a material breach of representation or warranty by Seller discovered by Purchaser after Closing, Purchaser's remedies are limited to those described in Section 8.4. IN NO EVENT SHALL SELLER, ITS DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, OWNERS, OR AFFILIATES, ANY OFFICER, DIRECTOR, EMPLOYEE, ATTORNEY, OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY, BEYOND ITS INTEREST IN THE REAL PROPERTY, FOR ANY CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY, OR OTHERWISE (COLLECTIVELY, THE "CLAIMS"), AND PURCHASER HEREBY WAIVES THE CLAIMS.

Section 7.3 Attorneys' Fees.

In the event either party hereto is required to employ an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such transaction.

17

Section 7.4 Disposition of Earnest Money.

In the event of a termination of this Agreement by either Seller or Purchaser, Closing Agent is authorized to deliver the Earnest Money to the party hereto entitled to same pursuant to the terms hereof on or before the fifth (5th) day following receipt by the Closing Agent and non-terminating party of written notice of such termination from the terminating party, unless the other party hereto notifies the Closing Agent that it disputes the right of the other party to receive the Earnest Money. In such event, the Closing Agent shall interplead the Earnest Money into a court of competent jurisdiction in Dallas County, Texas. All attorneys' fees and costs and Closing Agent's costs and expenses incurred in

connection with such interpleader shall be assessed against the party that is not awarded the Earnest Money or if the Earnest Money is distributed in part to both parties, then in proportion of such distribution. Notwithstanding the foregoing, in the event this Agreement is terminated and Purchaser is entitled to receive the Earnest Money, Closing Agent is not authorized to deliver the Earnest Money to Purchaser unless and until Seller notifies Closing Agent in writing that it has received the Documents and the Purchaser's Information. Seller agrees to deliver said notice promptly following its receipt of the Documents and the Purchaser's Information.

ARTICLE VIII.
REPRESENTATIONS, WARRANTIES, AND COVENANTS

Section 8.1 Purchaser's Representations and Warranties.

- (a) Authority of Purchaser. Purchaser represents and warrants that Purchaser has full right, power, and authority to enter into this Agreement and, at Closing, will have full right, power and authority to consummate the sale provided for herein.
- (b) No Bankruptcy or Receivership. That at no time on or before the Closing Date, shall any of the following have occurred with respect to Purchaser, and if Purchaser is a partnership, to any general partners of Purchaser: (i) the commencement of a case under Title 11 of the United States Code, as now constituted or hereafter amended, or under any other applicable federal or state bankruptcy law or other similar law; (ii) the appointment of a trustee or receiver of any property interest; (iii) an assignment for the benefit of creditors; (iv) an attachment, execution or other judicial seizure of a substantial property interest; (v) the taking of, failure to take, or submission to any action indicating an inability to meet its financial obligations as they accrue; or (vi) a dissolution or liquidation, death or incapacity.

Section 8.2 Seller's Representations and Warranties.

18

- (a) Seller is a Missouri corporation validly existing and in good standing, and Seller is qualified to do business in all states in which qualification is necessary to conduct its business, and has the authority to execute this Agreement and conclude the transactions contemplated therein.
- (b) There is no pending or, to the knowledge of Seller, threatened condemnation or similar proceeding or special assessment (inclusive of assessments for street widening, repair, or improvement), or change in zoning affecting the Real Property.
- (c) Seller has received no written notice concerning the Property from any Governmental Authority (as defined below in this Section 8.2) about a violation of any federal, state, county, or city statute, ordinance, code, rule, or regulation or stating that any investigation has commenced or is contemplated regarding any violation.
- (d) There is no pending or, to Seller's knowledge, threatened material litigation or administrative proceeding affecting the Property.
- (e) There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under other debtor

relief laws contemplated by, pending, or threatened against Seller.

- (f) All necessary certificates of occupancy, licenses, permits, authorizations, consents, and approvals required by all governmental or quasi-governmental authorities having jurisdiction, and the requisite certificates of the local Board of Fire Underwriters (or other body exercising similar functions) have been issued for the Improvements, have been paid for in full, and are in full force and effect.
- (g) Seller has not received any notices from any insurance company or board of underwriters of any defects or inadequacies in the Property or any part thereof which would adversely affect the insurability of the Property or increase the premiums for the insurance on the Property.
- (h) The Improvements and Personalty at Closing will be owned by Seller free and clear of any conditional bills of sale, chattel mortgages, security agreements or financing statements or other liens or security interests of any kind.
- (i) To Seller's knowledge, no default or breach exists under any of the covenants, conditions, restrictions, rights-of-way or easements, if any,

19

affecting all or any portion of the Property which are to be performed or complied with by the owner of the Property.

- (j) No work has been performed or is in progress at, and no materials have been furnished to, the Property which, though not presently the subject of, might give rise to, mechanics', materialmen's or other liens against the Property or any portion thereof. If any lien for such work is filed before or after Closing hereunder, Seller shall promptly discharge the same.
- (k) Seller has duly filed with the proper authorities all federal, state and local tax returns and reports relating to the Real Property required by law or regulation to be filed. The Property has been rendered and valued for ad valorem and similar taxes and assessments as fully improved.
- (l) To Seller's knowledge, there are no adverse or other parties in possession of the Property, or any part thereof, except Seller, nor has any party been granted any license, lease, or other right relating to the use or possession of the Property, or any part thereof, except the Permitted Encumbrances.
- (m) To Seller's knowledge, there are no threatened or endangered species or their habitat on the Property.
- (n) Seller warrants that it has not received notice of any environmental hazards or conditions that affect the Property, and that it has not received notice that there are any Hazardous Substances on the Property.
- (o) Seller has not used the Property for the storage or disposal of Hazardous Substances and has not received notice that the Property was ever used for those purposes.

The term "GOVERNMENTAL AUTHORITY" means the United States of

America, the state, county, and city where the Property is located, and any other political subdivision in which the Property is located or which exercises jurisdiction over the Property, and any agency, department, commission, board, bureau, property owners association, utility district, flood control district, improvement district, or similar district, or other instrumentality of any of them.

Section 8.3 Seller's Covenants.

Seller hereby covenants and agrees with Purchaser as follows:

- (a) At all time from the Effective Date until the Closing Date, Seller shall maintain (or cause to be maintained, in accordance with the terms of the Lease) in force, fire and extended coverage insurance upon the Real Property for not less than the full replacement value of the Real Property,

20

and commercial general liability insurance with respect to injury or death to persons and damage to property in an amount not less than \$1,000,000; and

- (b) Prior to the Closing, Seller shall maintain the Improvements in their present condition and repair, except for normal wear and tear and any casualty or condemnation, and Seller shall not remove any fixtures, equipment, furnishings and other personalty from the Improvements without replacing them with new items of like or greater value.
- (c) Seller shall not negotiate, execute or commit to enter into (i) any tenant lease; or (ii) any modification, amendment restatement or renewal of any of the leases, without Purchaser's prior written consent in each instance.
- (d) Seller shall not enter into any third party contract with respect to the Property which will survive the Closing.
- (e) Pending Closing, Seller shall operate and manage the Property in a normal businesslike manner, and shall perform when due, all of Seller's obligations under all third party contracts, insurance policies, governmental approvals and any other agreements relating to the Property and otherwise in accordance with applicable laws, ordinances, rules and regulations affecting the Property.
- (f) Seller has paid or will pay in full, prior to Closing, all bills and invoices for labor, goods, materials and services of any kind with respect to the Property and utility charges relating to the period prior to Closing.
- (g) All action required pursuant to this Contract which is necessary to effectuate the transactions contemplated herein will be taken promptly and in good faith by Seller, and Seller shall furnish Purchaser with such documents or further assurances as Purchaser may reasonably require.
- (h) After the date hereof and prior to Closing, no part of the Property, nor any interest therein, will be alienated, liened, encumbered or otherwise transferred.
- (i) Seller shall promptly notify Purchaser of any change in any condition with respect to the Property or of any event or circumstance which makes any representation or warranty of Seller to Purchaser

under this Contract untrue or misleading in any material respect, it being understood that Seller's obligation to provide notice to Purchaser under this Section 8.3 shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties or covenants under this Contract.

21

Section 8.4 Survival of Representations and Warranties.

Except as otherwise expressly set forth herein, the representations and warranties set forth in Section 8.2 shall be continuing and shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time, and such representations and warranties shall survive the Closing for a period of six (6) months, at which time they shall expire and terminate and be of no further force and effect unless a claim for breach thereof has been instituted within such six (6) month period; PROVIDED, HOWEVER, Purchaser shall have the right to bring an action thereon only if (i) Purchaser has given the Seller written notice of the circumstances giving rise to the alleged breach within such six (6) month period, and (ii) the aggregate, actual damages from all breaches by Seller exceeds \$50,000.

Section 8.5 Knowledge Standard.

For purposes of this Agreement, wherever the terms "SELLER'S KNOWLEDGE" or "TO THE BEST OF SELLER'S KNOWLEDGE" is used, it shall be limited to the actual knowledge (being the current, conscious awareness of facts or other information, without investigation or implied duty to investigate) of John Davis, Bryan Spain, or Chas Michel; provided, however, the foregoing individuals are acting for and on behalf and in their capacities as officers of Seller or one or more of Seller's affiliates and are in no manner expressly or impliedly making any of these representations in their individual capacity and Purchaser hereby waives any right to sue or to seek any judgment or claim against any of them on an individual basis. The term "TO SELLER'S KNOWLEDGE" or "TO THE BEST OF SELLER'S KNOWLEDGE" shall not include knowledge imputed to the Seller from any other person.

ARTICLE IX. CONDEMNATION

Section 9.1 Condemnation.

If, prior to Closing, any governmental authority or other entity having condemnation authority shall institute an eminent domain proceeding or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute such proceedings) with regard to a Material Portion (as hereinafter defined) of the Real Property, and the same is not dismissed on or before ten (10) days prior to Closing, Purchaser shall be entitled, as its sole remedy, to terminate this Agreement by giving written notice to Seller on or before the earlier to occur of (a) ten (10) days following notice by Seller to Purchaser of such condemnation, or (b) the Closing Date. In the event Purchaser does not terminate this Agreement pursuant to the preceding sentence, Purchaser shall be conclusively deemed to have elected to close the acquisition of the Property subject to such condemnation, without any reduction in Purchase Price, and waives any right to terminate this Agreement as a result thereof. For purposes

22

of this Section 9.1, a "MATERIAL PORTION" shall mean that portion of the Real Property which, if taken or condemned,

would reduce the value of the Property by not less than \$1,000,000.00. Notwithstanding anything to the contrary herein, if any eminent domain proceeding is instituted (or notice of which is given) solely for the taking of any subsurface rights for utility easements or for any right-of-way easement, and the surface may, after such taking, be used in substantially the same manner as though such rights had not been taken, Purchaser shall not be entitled to terminate this Agreement as to any part of the Real Property, but any award resulting therefrom shall be the exclusive property of Purchaser upon Closing. In the event Purchaser elects to terminate this Agreement under this Section 9.1, the Earnest Money (less the Independent Consideration) shall be returned to Purchaser upon Seller's receipt of the Documents and Purchaser's Information in accordance with Section 5.4, and neither party to this Agreement shall thereafter have any further rights or obligations hereunder except as otherwise provided in Sections 5.3 and 6.4 hereof. If Purchaser waives (or is deemed to have waived) the right to terminate this Agreement as a result of such a condemnation, despite such condemnation, Seller and Purchaser shall close this Agreement in accordance with the terms hereof with no reduction in the Purchase Price, and Seller shall assign to Purchaser at Closing all of Seller's right, title and interest in and to all proceeds resulting or to result from said condemnation and Seller will execute and deliver to Purchaser at Closing, or thereafter on demand, all proper instruments for the assignment to and collection by Purchaser of any such award.

ARTICLE X.
RISK OF LOSS

Section 10.1 Risk of Loss.

Until Closing, Seller alone shall bear the risk of loss should there be damage to any of the Improvements by fire or other casualty (collectively, "CASUALTY"). If, prior to the Closing, any of the Improvements shall be damaged by a Casualty, Seller shall take all action necessary to preserve and protect the Improvements from further loss or damage, and Seller shall deliver to Purchaser within seven (7) business days of such Casualty written notice ("CASUALTY LOSS NOTICE") of such Casualty after it has made its determination provided for in Section 10.2 hereof.

Section 10.2 Loss.

As used herein, the Improvements shall be "MATERIALLY DAMAGED" if the cost of restoring the same to their condition prior to the fire or other casualty in full compliance with all applicable building and zoning laws, ordinances and regulations will exceed \$100,000 but will not exceed \$500,000 whether or not such damage is covered by insurance. As used herein, the Improvements shall be "SUBSTANTIALLY DAMAGED" if the cost of restoring the same to their condition prior to the fire or other casualty in full compliance with all applicable building

and zoning laws, ordinances and regulations will equal or exceed \$500,000, whether or not such damage is covered by insurance. If the Improvements are Materially Damaged, Purchaser (but not Seller) may either (a) terminate this Contract by delivering written notice to Seller within ten (10) business days following Seller's delivery of the Casualty Loss Notice (said period hereinafter called "FIRST CASUALTY OPTION PERIOD") or (b) waive its right of termination and proceed to close this transaction in accordance with the terms hereof without reduction to the Purchase Price (the "WAIVER OPTION"). Failure of Purchaser to deliver written notice of termination within said fifteen (15) day period shall be

conclusively deemed to be an election by Purchaser of the Waiver Option. If the Improvements are Substantially Damaged, either party may terminate this Contract by delivering written notice to the other party within the First Casualty Option Period. Failure to provide notice shall be deemed an election on both parties part to proceed in accordance with the terms hereof. If this Contract does not terminate pursuant to the terms of this Section 10.2 prior to expiration of the First Casualty Option Period or, in the event the Improvements are neither Materially Damaged nor Substantially Damaged: (a) the transaction shall close in accordance with its terms notwithstanding the casualty; (b) Seller shall promptly commence and thereafter complete within a reasonable period of time the repair of the Improvements to substantially the same condition as existed prior to the loss; and (c) Seller shall deposit the insurance proceeds with the Title Company and the Title Company shall be authorized to disburse that sum: (i) to Seller in monthly installments based upon the value of the work and materials completed upon Purchaser's acceptance of the completed work, which acceptance shall not be unreasonably withheld or delayed or (ii) to Purchaser if Seller fails to complete such work within a reasonable time following Closing and Purchaser gives written notice to Seller and Title Company terminating the escrow, in which event Purchaser shall apply the escrowed funds so delivered to it to the reasonable cost of completion of such work. Any excess of such funds over the above such cost shall be remitted by Purchaser to Seller. If this transaction closes prior to the repair of any damage, the Title Policy may contain the standard exception relating to mechanic's liens and pending disbursements as provided by Rule P-8 of the Rules promulgated by the Texas Board of Insurance. Upon completion of the repairs, Seller shall cause the Title Company to remove the exception. If Closing is postponed in order for Seller to complete such repairs and Seller fails to substantially complete same not later than a date which would allow Closing to occur on or prior to February 1, 2002, Purchaser (as its sole remedy) may either terminate this Agreement by written notice to Seller or close with the establishment of the above mentioned escrow account. In the event Seller or Purchaser elects to terminate this Agreement under this Section 10.2, the Earnest Money (less the Independent Consideration) shall be returned to Purchaser upon Seller's receipt of the Documents and Purchaser's Information and thereafter neither party to this Agreement shall thereafter have any further rights or obligations hereunder, except as otherwise provided in Sections 5.3 and 6.4 hereof. If Purchaser elects the Waiver Option, then at the sole option of Seller, (a) Seller shall repair the Improvements to substantially their condition prior to such

24

damage, or (b) Seller shall deliver to Purchaser an amount equal to the deductible and assign to Purchaser all of its rights in the resulting casualty insurance proceeds (but the amount of such deductible plus insurance proceeds shall not exceed the lesser of (i) the cost of repair or (ii) the Purchase Price) and a pro rata share of the rental or business loss proceeds, if any, from the insurance coverage. In the event Seller elects to assign insurance proceeds, (A) Purchaser may notify all appropriate insurance companies of its interest in the insurance proceeds, and (B) all casualty insurance proceeds payable as a result of the loss (subject to the limitation herein described) and Purchaser's pro rata share of any rental or business loss proceeds shall be assigned to Purchaser at Closing.

Section 10.3 Non-Material Loss.

In the event, in Seller's determination, the Improvements have been neither Materially Damaged or Substantially Damaged by a Casualty, the rights and obligations of the parties shall not be affected thereby and at the sole option of Seller, (a) Seller shall repair the Improvements to substantially their

condition prior to such damage, or (b) Seller shall deliver to Purchaser an amount equal to the deductible and assign to Purchaser all of its rights in the resulting casualty insurance proceeds (but the amount of such deductible plus insurance proceeds shall not exceed the lesser of (i) the cost of repair or (ii) the Purchase Price) and a pro rata share of the rental or business loss proceeds, if any, from the insurance coverage. In the event Seller elects to assign insurance proceeds, (A) Purchaser may notify all appropriate insurance companies of its interest in the insurance proceeds, and (B) all casualty insurance proceeds payable as a result of the loss (subject to the limitation herein described) and Purchaser's pro rata share of any rental or business loss proceeds shall be assigned to Purchaser at Closing.

Section 10.4 Delay in Completion of Repairs.

If Seller has elected to repair and if the repairs cannot be completed by the Closing Date, the Seller may, at Seller's sole option, and following notice to Purchaser of Seller's exercise of such option on or before Closing, postpone the Closing Date until five (5) days following substantial completion of the repairs (but in no event more than thirty (30) days following the Closing Date), notwithstanding anything in Section 6.1 of this Agreement to the contrary; provided, however, in the event Seller has failed for any reason whatsoever to substantially complete such repairs on or before the date that is thirty (30) days following the Closing Date, Seller shall deliver to Purchaser an amount equal to the deductible and assign to Purchaser all of its rights in the resulting casualty proceeds, (but the amount of such deductible plus insurance proceeds shall not exceed the lesser of (i) cost of repair or (ii) the Purchase Price) and a pro rata share of the rental or business loss proceeds, if any, from the insurance coverage, and, if Seller has executed one or more contracts for the repairs, Seller shall assign to Purchaser, and Purchaser shall assume in writing, all of Seller's rights

25

and obligations under such contracts and the amount of such deductible payable to Purchaser shall be reduced by the amount of any out-of-pocket expenditures incurred by Seller in connection with such repairs.

ARTICLE XI. MISCELLANEOUS

Section 11.1 Entire Agreement.

This Agreement contains the entire agreement of the parties hereto. There are no other agreements, oral or written, and this Agreement can be amended only by written agreement signed by the parties hereto, and by reference, made a part hereof.

Section 11.2 Agreement Binding on Parties; Assignment.

This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto. Purchaser may assign its rights under this Agreement only upon the following conditions: (i) the assignee of Purchaser must be an affiliate (as that term is defined in the rules and regulations promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended) of Purchaser, (ii) all of the Earnest Money must have been delivered in accordance with Section 2.2, (iii) the Inspection Period shall be deemed to have ended, (iv) Purchaser shall remain primarily liable for the performance of Purchaser's obligations, (v) Purchaser shall agree to reimburse Seller for its reasonable legal fees and expenses, if any, incurred in connection with revisions to the closing documents resulting from such assignment, and (vi)

a copy of the fully executed written assignment and assumption agreement along with the taxpayer identification number of the proposed assignee, shall be delivered to Seller at least ten (10) days prior to Closing. No transfer or assignment in violation of this Section 11.2 is valid or enforceable.

Section 11.3 Effective Date.

The Effective Date of this Agreement shall be the date on which the Closing Agent acknowledges its receipt of a copy of this Agreement executed by both Seller and Purchaser and receipt of the Earnest Money. The execution hereof by Seller shall constitute an offer by Seller to Purchaser to sell the Property on the terms and conditions herein stated, which must be accepted by Purchaser on or before November 9, 2001. If Seller's offer is not timely accepted, this Agreement shall thereafter be null and void.

Section 11.4 Notice.

26

All notices, requests, approvals, consents, and other communications required or permitted under this Agreement ("NOTICES") must be in writing and are effective:

- (a) on the business day sent if (i) sent by telecopier prior to 5:00 p.m. Dallas, Texas time, (ii) the sending telecopier generates a written confirmation of sending, and (iii) a confirming copy is sent on the same business day by one of the other methods specified below.
- (b) on the next business day after delivery, on a business day, to a nationally recognized overnight courier service for prepaid overnight delivery.
- (c) 3 days after being deposited in the United States mail, certified, return receipt requested, postage prepaid, or
- (d) upon receipt if delivered by any method other than the methods specified above.

All Notices must be sent to the address for each party specified below or to any other address any party specifies by ten (10) days' prior notice to the other party.

Seller: D & B Realty Holding, Inc.
2481 Manana Drive
Dallas, Texas 75220
Attn: John Davis, Esq.
Fax: (214) 357-1536
Email: john_davis@daveandbusters.com

with a copy Kane, Russell, Coleman & Logan, P.C.
to: 3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Attn: Scott A. Dyche
Fax: (214) 777-4299
Email: sdyche@krcl.com

and to: Staubach Retail Services, Inc.
15601 Dallas Parkway
Suite 400
Addison, Texas 75001
Attn: Mike Holsomback
Fax: (972) 361-5909
Email: holsomback@staubach.com

Purchaser: KAZA I, LTD.
c/o AMCAM, INC., its General Partner

10803 Keystone Bend
Austin, Texas 78750
Attn: James A. Bieber
Fax: (512) 336-1055
Email: 123roxy@swbell.net

with a copy to: McLeroy, Alberts & Benjamin, P.C.
608 West 12th Street
Austin, Texas 78701
Attn: Christopher M. Benjamin
Fax: (512) 472-1622
Email: cbenjamin@att.net

Closing Agent/
Title Company: Hexter-Fair Title Company
8333 Douglas Avenue

Suite 130
Dallas, Texas 75225
Attn: Carol Erick
Fax: (214) 987-3351
Email: caerick@hexter-fair.com

Section 11.5 Time of the Essence.

Time is of the essence in all things pertaining to the performance of this Agreement.

Section 11.6 Place of Performance.

This Agreement is made and shall be performable in Dallas, Texas, and shall be construed in accordance with the laws of the State of Texas, without regard to principles of conflicts of law.

Section 11.7 Currency.

All dollar amounts are expressed in United States currency.

Section 11.8 Section Headings.

The section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several sections hereof.

Section 11.9 Obligations.

To the extent necessary to carry out the terms and provisions hereof, and unless otherwise specifically provided elsewhere herein, the terms, conditions, obligations and rights set forth herein shall not be deemed terminated at the time of Closing, nor will they merge into the various documents executed and delivered at the time of Closing.

Section 11.10 Business Days.

In the event that any date or any period provided for in this Agreement shall end on a Saturday, Sunday, or legal holiday in the state defined in Section 11.6 hereof, the applicable date or period shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

Section 11.11 No Recordation.

Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto and any such recordation of this Agreement or memorandum hereto by Purchaser without the prior written consent of Seller shall constitute a default hereunder by Purchaser, whereupon this Agreement shall, at the option of Seller, terminate and be of no

further force and effect. Upon termination, all Earnest Money shall be immediately delivered to Seller, whereupon the parties shall have no further duties or obligations one to the other except as provided in Sections 5.3 and 6.4.

Section 11.12 Multiple Counterparts.

This Agreement may be executed in multiple counterparts, each of which is to be deemed an original for all purposes. This Agreement may be executed by facsimile signature.

Section 11.13 Severability.

If any provision of this Agreement or application to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

Section 11.14 Taxpayer ID.

29

Purchaser's Taxpayer ID Number is _____.

Section 11.15 Section 1031 Exchange.

Purchaser may elect, upon notice to Seller given prior to the Closing Date, to exchange the fee title in the Property for other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder (the "1031 EXCHANGE TRANSACTION"). In order to facilitate the 1031 Exchange Transaction, Purchaser may retain the services of a Qualified Intermediary within the meaning of Treas. Reg. 1.1031(k)-1(g)(4), which shall provide services to Purchaser in connection with Purchaser's 1031 Exchange Transaction. Purchaser expressly reserves the right to assign its rights under this Agreement to a Qualified Intermediary on or before the Closing Date. However, this assignment in no way relieves Purchaser of any obligations or duties under this Agreement. By executing this Agreement, Seller agrees to cooperate with Purchaser and the Qualified Intermediary, at no additional cost to Seller, to effect the 1031 Exchange Transaction and to execute and deliver any and all documents which reasonably may be required to effect the 1031 Exchange Transaction.

SELLER:

D & B REALTY HOLDING, INC.,
a Missouri corporation

DATE: November 9, 2001

By: /s/ Chas Michel

Name: Chas Michel

Title: Treasurer

PURCHASER:

KAZA I, LTD.,
a Texas limited partnership

DATE: November 9, 2001

By: AMCAM, INC., a Texas corporation
Its: General Partner

By: /s/ James A. Bieber

James A. Bieber
Its: President

JOINDER BY CLOSING AGENT

Hexter-Fair Title Company, referred to in this Agreement as the Closing Agent, hereby acknowledges that it received this Agreement executed by Seller and Purchaser and the Earnest Money on the 12th day of November 2001 (the "EFFECTIVE DATE"), and accepts the obligations of the of the Closing Agent as set forth herein. The Closing Agent hereby agrees to hold and distribute the Earnest Money in accordance with the terms and provisions of this Agreement.

HEXTER-FAIR TITLE COMPANY

By: /s/ Carol Erick

Name: Carol Erick

Title: Executive Vice President

EXHIBIT A

LEGAL DESCRIPTION OF LAND

[TO BE ADDED]

EXHIBIT B

SPECIAL WARRANTY DEED

STATE OF TEXAS Section
Section KNOW ALL MEN BY THESE PRESENTS THAT:

COUNTY OF HARRIS Section

THAT D & B REALTY HOLDING, INC., a Missouri corporation ("GRANTOR"), for and in consideration of the sum of TEN AND NO/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by KAZA I, LTD., a Texas limited partnership ("GRANTEE"), the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD AND CONVEYED and by these presents does GRANT, SELL AND CONVEY unto Grantee all of Grantor's rights, titles, powers, privileges and interests in and to that certain real property situated in Harris County, Texas, and more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the "LAND"), together with (i) all buildings, improvements, fixtures and other items of real estate located on the Land (collectively, the "IMPROVEMENTS"), and (ii) all and singular the rights, titles, benefits, privileges, remainders, reversions, easements, tenements, hereditaments, interests and appurtenances of Grantor pertaining to the Land and the Improvements, including, without limitation, any right, title and interest of Grantor (but without warranty whether statutory, express or implied) in and to adjacent strips or gores, if any, between the Land and abutting properties, and in and to adjacent streets, highways, roads, alleys or rights-of-way, either at law or in equity, in possession or expectancy (all of the above-described properties together with the Land and the Improvements are hereinafter collectively referred to as the "PROPERTY"). This conveyance is made and accepted subject and subordinate to (a) standby fees, taxes and assessments by any taxing authority for the current year, and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, and (b) the matters set forth on Exhibit B attached hereto and made a part hereof for all purposes (collectively, the "PERMITTED ENCUMBRANCES").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in any wise belonging unto Grantee, Grantee's

heirs, executors, administrators, personal representatives, successors and assigns forever and subject to the Permitted Encumbrances, Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's heirs, executors, administrators, personal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject, however, to the Permitted Encumbrances.

1

EXECUTED to be effective for all purposes as of the ____ day of _____ 2001.

GRANTOR:

D & B REALTY HOLDING, INC., a Missouri corporation

By: _____
Name: _____
Title: _____

AFTER RECORDING RETURN TO:

ADDRESS OF GRANTEE:

KAZA I, LTD.
c/o AMCAM, INC.
10803 Keystone Bend
Austin, Texas 78750

STATE OF TEXAS Section
 Section
COUNTY OF DALLAS Section

This instrument was acknowledged before me on the ____ day of _____, 2001, by _____, _____ of D & B Realty, Inc., a Missouri corporation, on behalf of said corporation.

[SEAL]

Notary Public in and for the State of Texas

My commission expires:

Printed Name of Notary Public

2

EXHIBIT "A"

LEGAL DESCRIPTION

3

EXHIBIT "B"

PERMITTED ENCUMBRANCES

EXHIBIT C

BILL OF SALE AND ASSIGNMENT

This BILL OF SALE AND ASSIGNMENT (this "AGREEMENT") is made and entered into effective as of the day of _____ 2001 (the "EFFECTIVE DATE"), by and between D & B REALTY HOLDING, INC., a Missouri corporation ("ASSIGNOR"), as assignor, for the benefit of KAZA I, LTD. a Texas limited partnership ("ASSIGNEE"), as assignee.

PRELIMINARY STATEMENTS

The following statements are a material part of this Agreement:

A. Concurrently herewith, Assignor is transferring and conveying to Assignee, by Special Warranty Deed, all of Assignor's interest in and to the land described on EXHIBIT "A" (the "LAND") attached to this Agreement and incorporated in this Agreement by reference, together with all improvements thereon and other property more particularly described therein (collectively, the "PROPERTY").

B. Assignor desires to assign to Assignee all of Assignor's interest, if any, in and to all equipment, machinery, and personal property used on or in connection with the operation and/or maintenance of the Property; and all of Assignor's interest, if any, in and to other items of personal property, both tangible and intangible, affixed or attached to, or in connection with the use, enjoyment, occupancy and operation of the Property, except those owned by others, but including the property described below (all of the foregoing properties and assets being herein collectively called the "ASSIGNED PROPERTIES").

AGREEMENTS:

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged:

1. Assignment. Assignor does hereby ASSIGN, CONVEY, GIVE, GRANT, BARGAIN, SELL, CONFIRM AND DELIVER unto Assignee and its respective successors and assigns, all of Assignor's rights, title and interest, if any, in and to the Assigned Properties. TO HAVE AND TO HOLD all and singular the Assigned Properties unto Assignee, its successors and assigns, forever, and Assignor does hereby bind itself, its successors and assigns, to forever WARRANT AND DEFEND Assignee's title to the Assigned Properties and all rights and interests therein unto Assignee, its successors and assigns, against all every person and persons whomsoever lawfully claiming the same or any interest therein, by, through or under Assignor, but not otherwise.

1

2. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, Assignor has caused this Agreement to be executed effective as of the Effective Date.

Assignor:

D & B REALTY HOLDING, INC.,
a Missouri corporation

By:

Name:

Title: _____

2

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

3

EXHIBIT D

CERTIFICATION OF NON-FOREIGN STATUS

SECTION 1445 OF THE INTERNAL REVENUE CODE PROVIDES THAT A TRANSFEREE OF A UNITED STATES REAL PROPERTY INTEREST MUST WITHHOLD TAX IF THE TRANSFEROR IS A FOREIGN PERSON. TO INFORM THE TRANSFEREE, _____, THAT WITHHOLDING TAX IS NOT REQUIRED UPON THE DISPOSITION OF A UNITED STATES REAL PROPERTY INTEREST BY D & B REALTY HOLDING, INC. ("SELLER"), THE UNDERSIGNED HEREBY CERTIFIES THE FOLLOWING ON BEHALF OF SELLER:

1. Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations promulgated pursuant thereto);

2. Seller's United States Employer Identification Number is: _____; and

3. Seller's office address is: 2481 Manana Drive, Dallas, Texas 75220.

Seller understands that this Certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalties of perjury, I declare that I have examined this Certification and, to the best of my knowledge and belief, it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

EXECUTED this ____ day of _____ 2001, at Dallas, Texas.

SELLER:

D & B REALTY HOLDING, INC.,
a Missouri corporation

By: _____

Name: _____

Title: _____

1

STATE OF TEXAS Section
 Section
COUNTY OF DALLAS Section

This instrument was ACKNOWLEDGED before me, on the ____ day of _____ 2001, by _____, who declares that he is the _____ of Dave & Buster's, Inc., a Missouri corporation, on behalf of said corporation.

[S E A L]

Notary Public, State of Texas

My Commission Expires:

Printed Name of Notary Public

2

EXHIBIT E

ASSIGNMENT OF WARRANTIES

This Assignment of Warranties (this "Assignment") is made as of _____, 2001, by D & B REALTY HOLDING, INC., a Missouri corporation ("Grantor"), and KAZA I, LTD., a Texas limited partnership ("Grantee").

ASSIGNMENT

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash and other good and valuable consideration to Grantor paid by Grantee, the receipt and sufficiency of which are acknowledged, Grantor and Grantee agree as follows:

1. Assignment. Grantor GRANTS, SELLS, and CONVEYS to Grantee all of Grantor's interest in the following described properties, rights, and estates (collectively, the "PROPERTY") that are located on, affixed to, or used in connection with the real property (the "REAL PROPERTY") described on Exhibit A attached to this Assignment:

- (a) all service contracts, vending agreements, assignable licenses, or assignable permits with respect to the Real Property listed on Exhibit B to this Assignment (the "CONTRACTS"), and the continuing rents, issues, and profits from the Contracts, if any;
- (b) all security deposits, utility deposits, and other deposits and security deposit accounts, if any, maintained with respect to the Real Property (the "DEPOSITS"); and
- (c) all warranties and guaranties which are applicable to or covering any part of the improvements, personalty, or equipment situated on the Property, if any.

TO HAVE AND TO HOLD the Property to Grantee, its successors and assigns, forever. Grantor binds itself, its successors and assigns, to WARRANT AND FOREVER DEFEND, all and singular the Property, subject to the warranties, covenants, and conditions in this Assignment, to Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the Property or any part thereof, by, through, and under Grantor, but not otherwise.

2. Assumption. Grantee assumes and agrees to perform all terms, covenants, and conditions of the Leases and the Contracts, on the part of the lessor or on the part of the Grantor, as the case may be, therein required to be performed arising on or after the date of this Assignment. Grantee also assumes and agrees to hold and pay the Deposits to the persons entitled to them.

1

3. Indemnities. Grantor shall indemnify, defend, and hold Grantee harmless from any and all liabilities, claims, demands, damages, and causes of actions that may now or hereafter be made or asserted against Grantee arising out of or related to the Property for acts or omissions of Grantor occurring prior to the date of this Assignment.

Grantee shall indemnify, defend, and hold Grantor harmless from any and all liabilities, claims, demands, damages, and causes of actions that may now or hereafter be made or asserted against Grantor arising out of or related to the Property for acts or omissions occurring on or after the date of this Assignment.

4. Disclaimer GRANTOR HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, EXPRESS OR IMPLIED, OF, AS, TO AND CONCERNING THE FITNESS, SUITABILITY, MERCHANTABILITY OR CONDITION OF ANY OF THE PROPERTY AND ITS IMPROVEMENTS AND FIXTURES. THE TRANSFER OF THE PROPERTY TOGETHER WITH THE IMPROVEMENTS AND FIXTURES IS IN THEIR "AS IS," "WHERE IS" CONDITION, WITH ALL FAULTS.

DATED EFFECTIVE as of the first date above written.

GRANTOR:

D & B REALTY HOLDING, INC., a Missouri corporation

By: _____

Name: _____

Title: _____

GRANTEE:

KAZA I, LTD., a Texas limited partnership

By: AMCAM, INC., a Texas corporation
Its: General Partner

By: _____

James A. Bieber
Its: President

2

EXHIBIT F

LEASE

[TO BE ATTACHED]

1

EXHIBIT G

PROMISSORY NOTE

\$2,633,100.00

Dallas, Texas

FOR VALUE RECEIVED, the undersigned, KAZA I, LTD. (the "Borrower"), promises to pay to the order of D & B REALTY HOLDING, INC., a Missouri corporation ("Lender"), at 2481 Manana Drive, Dallas, Texas 75220, or at such other place as holder hereof may designate in lawful money of the United States of America in immediately available funds the principal sum of TWO MILLION SIX HUNDRED THIRTY-THREE THOUSAND ONE HUNDRED and NO/100 DOLLARS (\$2,633,100.00) or so much as advanced hereunder from time to time, together with interest thereon from day to day outstanding from the date of advance at the rate of seven and one-half percent (7.5%) per annum, payable as follows:

Payments of principal and interest, in the amount of \$21,212.07 each, shall be due and payable monthly, commencing on _____, 2001, and continuing regularly on the first (1st) day of each calendar month thereafter until _____, 2021 at which time all outstanding principal and accrued, unpaid interest shall be due and payable.

Upon the failure of Borrower to repay the amounts due under this Promissory Note (this "Note"), when due, the holder hereof shall have the right to declare the unpaid principal balance and accrued but unpaid interest on this Note at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing

payment hereof, if any, and to exercise any of its other rights, powers and remedies, at law or in equity. All such rights, powers, and remedies are cumulative of each other and of any and all other rights and remedies existing at law or in equity. Notwithstanding anything to the contrary herein contained, Lender shall not exercise any rights herein granted until such time as Lender has given Borrower written notice of default, and has given Borrower the opportunity to cure such default within ten (10) business days from the date of actual delivery of the notice to Borrower.

Should the indebtedness represented by this Note or any part hereof be collected at law or in equity or in bankruptcy, receivership or other court proceeding, or should this Note be placed in the hands of attorneys for collection after default, Borrower agrees to pay, in addition to the principal, interest due and payable hereon and any other sums due and payable hereunder, all costs of collecting or attempting to collect this Note, including reasonable attorneys' fees and expenses (including those incurred in connection with any appeal).

Borrower and all endorsers and guarantors of this Note hereby waive presentment, demand, notice, protest, stay of execution, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration, all other notices, filing of suit and diligence in collecting this Note or enforcing any of the security here for, and all other defenses to payment generally; and hereby assent to the terms hereof, and

1

agree that any renewal, extension, or postponement of the time for payment or any other indulgence or any substitution, exchange, or release of collateral or the additional release of any person or entity primarily or secondarily liable, may be affected without notice to and without releasing Borrower, any endorser or any guarantor from any liability hereunder or under any related guaranty and that the holder hereof shall not be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to enforce its rights against them or any security herefor.

Borrower may prepay any sums due and owing hereunder at any time, without penalty. This Note may be assigned by Borrower, without the necessity of the consent of Lender.

It is the intent of Lender and Borrower to conform to and contract in strict compliance with applicable usury laws from time to time in effect. All agreements between Lender or any other holder hereof and Borrower are hereby limited by the provisions of this paragraph which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable or received under this Note, or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this paragraph and such document shall, ipso facto, be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If the holder hereof shall ever receive anything of value that is characterized as interest under applicable law and that would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount that would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the indebtedness evidenced hereby in the inverse order of its maturity and not to the payment of interest, or refunded to Borrower or the other payor thereof if and to the extent such amount that would have been excessive exceeds such unpaid principal. The right to accelerate maturity of this Note or any other indebtedness does not include the right to accelerate any interest that has not otherwise accrued on the date of such acceleration, and the holder hereof does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the holder hereof shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this paragraph, the term "applicable law" shall mean the laws of the State of Texas or the federal laws of the United States applicable to this transaction, whichever laws

allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future. This provision shall control any other provision of this Note or in any other documents relating to this Note.

Lender, as tenant, and Borrower, as landlord, have entered into that certain Lease Agreement of even date herewith (the "Lease") covering certain real property and improvements located in Dallas, Texas. Notwithstanding anything to the contrary contained herein, in the event that Lender shall default under the Lease, and such default shall remain uncured for the period

2

provided in the Lease so as to become an Event of Default (as defined in the Lease), then this Note shall be immediately deemed paid in full and canceled, and Borrower shall have no further obligations, of any kind, to Lender under this Note. Any default by Borrower under this Note shall constitute a default by landlord under the Lease.

THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY TEXAS LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS NOTE OR UNDER ANY OTHER DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS NOTE (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR ANY COURSE OR CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS NOTE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

THE WRITTEN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES,

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Note as of the date and year first above written.

BORROWER:

KAZA I, LTD.,
a Texas limited partnership

By: AMCAM, INC., a Texas corporation
Its: General Partner

3

By:

James A. Bieber
Its: President

4

LEASE AGREEMENT

By and Between

KAZA I, LTD.,
a Texas limited partnership

(As Landlord)

AND

DAVE & BUSTER'S I, L.P.,
a Texas limited partnership

(As Tenant)

December 14, 2001

Houston, Texas

TABLE OF CONTENTS

	Page

1. Demise of Premises.....	1
2. Certain Definitions.....	1
3. Title and Condition.....	4
4. Use of Leased Premises; Quiet Enjoyment.....	6
5. Term.....	7
6. Rent.....	7
7. Net Lease; Non-Terminability.....	8
8. Payment of Impositions; Compliance with Legal Requirements and Insurance Requirements.....	9
9. Liens; Recording and Title.....	10
10. Indemnification and Waiver of Claims.....	11
11. Maintenance and Repairs.....	12
12. Alterations.....	13
13. Condemnation.....	14
14. Insurance.....	17
15. Restoration.....	20

16.	Subordination to Financing.....	22
17.	Assignment or Subleasing.....	23
18.	Permitted Contests.....	23
19.	Conditional Limitations; Default Provisions.....	24
20.	Additional Rights of Landlord and Tenant.....	27
21.	Notices.....	28
22.	Estoppel Certificates.....	30

23.	Surrender and Holding Over.....	30
24.	No Merger of Title.....	31
25.	Definition of Landlord.....	31
26.	Hazardous Substances.....	31
27.	Entry by Landlord.....	33
28.	No Usury.....	33
29.	Separability.....	33
30.	Miscellaneous.....	34
31.	Additional Rent.....	35

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "LEASE") made as of the 14th day of December 2001, by and between KAZA I, LTD., a Texas limited partnership, having an office at 10803 Keystone Bend, Austin Texas 78750 ("LANDLORD"), and DAVE & BUSTER'S I, L.P., a Texas limited partnership, having its principal office at 2481 Manana Drive, Dallas, Texas 75220 ("TENANT").

In consideration of the rents and provisions herein stipulated to be paid and performed, Landlord and Tenant, intending to be legally bound, hereby covenant and agree as follows:

1. Demise of Premises. Landlord hereby demises and leases to Tenant and Tenant hereby takes and leases from Landlord for the term and upon the provisions hereinafter specified the following described property (the "LEASED PREMISES"): (i) the lot or parcel of land described on Exhibit A attached hereto and made a part hereof, together with the easements, rights, and appurtenances hereunto belonging or appertaining ("LAND"); (ii) the buildings, structures, and other improvements on the Land (collectively, the "IMPROVEMENTS"); and (iii) the machinery and equipment which is attached to the Improvements in such a manner as to become fixtures under applicable law, together with all additions and accessions thereto, substitutions therefor and replacements thereof permitted by this Lease (collectively, the "EQUIPMENT"), excepting therefrom the Trade Fixtures (as hereinafter defined).

2. Certain Definitions.

"ADDITIONAL RENT" shall mean Additional Rent as defined in Paragraph 32.

"ADJOINING PROPERTY" shall mean all sidewalks, curbs, gores, and vault spaces adjoining the Leased Premises.

"ALTERATION" or "ALTERATIONS" shall mean any or all changes, additions (whether or not adjacent to or abutting any then existing buildings), expansions (whether or not adjacent to or abutting any then existing buildings), improvements, reconstructions, removals, or replacements of any of the Improvements or Equipment, both interior or exterior, and ordinary and extraordinary.

"BASIC RENT" shall mean Basic Rent as defined in Paragraph 6.

"BASIC RENT PAYMENT DATES" shall mean the Basic Rent Payment Dates as defined in Paragraph 6.

"COMMENCEMENT DATE" shall mean the Commencement Date as defined in Paragraph 5.

1

"CONDEMNATION" shall mean a Taking and/or a Requisition.

"DEFAULT RATE" shall mean the Default Rate as defined in Paragraph 19(b) (iv).

"EQUIPMENT" shall mean the Equipment as defined in Paragraph 1.

"EVENT OF DEFAULT" shall mean an Event of Default as defined in Paragraph 19(a).

"IMPOSITIONS" shall mean the Impositions as defined in Paragraph 8.

"IMPROVEMENTS" shall mean the Improvements as defined in Paragraph 1.

"INSURANCE REQUIREMENT" or "INSURANCE REQUIREMENTS" shall mean, as the case may be, any one or more of the terms of each insurance policy required to be carried by Tenant under this Lease and the requirements of the issuer of such policy, and whenever Tenant shall be engaged in making any Alteration or Alterations, repairs or construction work of any kind (collectively, "WORK"), the term "INSURANCE REQUIREMENT" or "INSURANCE REQUIREMENTS" shall be deemed to include a requirement that Tenant obtain or cause its contractor to obtain completed value builder's risk insurance when the estimated cost of the Work in any one instance exceeds the sum of One Hundred Thousand Dollars (\$100,000.00) and that Tenant or its contractor shall obtain worker's compensation insurance or other adequate insurance coverage covering all persons employed in connection with the Work, whether by Tenant, its contractors or subcontractors and with respect to whom death or bodily injury claims could be asserted against Landlord.

"LAND" shall mean the Land as defined in Paragraph 1.

"LAW" shall mean any constitution, statute, or rule of law.

"LEASED PREMISES" shall mean the Leased Premises as defined in Paragraph 1.

"LEGAL REQUIREMENT" or "LEGAL REQUIREMENTS" shall mean, as the case may be, any one or more of all present and future laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency (but excluding those which by their terms are not applicable to and do not impose any obligation on Tenant, Landlord, or the Leased Premises) and all covenants, restrictions and conditions now of record which may be applicable to Tenant, Landlord (with respect to the Leased Premises) or to all or any part of or interest in the Leased Premises, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Leased Premises, even if compliance therewith (i) necessitates structural changes or improvements (including by way of example but not limitation changes required to comply with the "Americans with Disabilities Act of 1990", the "Texas Architectural Barriers Act", OSHA required safety modifications, and compliance with Texas

2

Health and Safety Code in regards fire extinguishers, fire escapes, rest rooms, sanitation, etc.) or results in interference with the use or enjoyment of the Leased Premises or (ii) requires Tenant to carry insurance other than as required by the provisions of this Lease.

"LENDER" shall mean an entity identified as such in writing to Tenant that makes a Loan to Landlord, secured by a Mortgage and evidenced by a Note or which is the holder of the Mortgage and Note as a result of an assignment thereof.

"LOAN" shall mean a loan made by a Lender to Landlord secured by a Mortgage and evidenced by a Note.

"MORTGAGE" shall mean a first priority mortgage or similar security instrument hereafter executed covering the Leased Premises from Landlord to Lender.

"NET AWARD" shall mean the entire award payable to Landlord by reason of a Condemnation, less any reasonable expenses incurred by Landlord in collecting such award.

"NET PROCEEDS" shall mean the entire proceeds of any insurance required under clauses (i), (iv), (v) or (vi) of Paragraph 14(a), less any actual and reasonable expenses incurred by Landlord in collecting such proceeds.

"NOTE" or "NOTES" shall mean a Promissory Note or Notes hereafter executed from Landlord to Lender, which Note or Notes will be secured by a Mortgage and an assignment of leases and rents.

"PERMITTED ENCUMBRANCES" shall mean those covenants, restrictions, reservations, liens, conditions, encroachments, easements, and other matters of title that affect the Leased Premises as of the date of Landlord's acquisition thereof, excepting, however, any such matters arising from the acts of Landlord (such as liens arising as a result of judgments against Landlord).

"REPLACED EQUIPMENT" or "REPLACEMENT EQUIPMENT" shall mean the Replaced Equipment and Replacement Equipment, respectively, as defined in Paragraph 11(d).

"REQUISITION" shall mean any temporary condemnation or confiscation of the use or occupancy of the Leased Premises by any governmental authority, civil or military, whether pursuant to an agreement with such governmental authority in settlement of or under threat of any such requisition or confiscation, or otherwise.

"RESTORATION" shall mean the Restoration as defined in Paragraph 13(c) (i).

"STATE" shall mean the State of Texas.

3

"TAKING" shall mean any taking of the Leased Premises in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of any agreement with any condemner in settlement of or under threat of any such condemnation or other eminent domain proceedings or by any other means, or any de facto condemnation.

"TERM" shall mean the Term as defined in Paragraph 5.

"TERMINATION DATE" shall mean the Termination Date as defined in Paragraph 13(b) (i) (A).

"TRADE FIXTURES" shall mean all fixtures, equipment and other items of personal property (whether or not attached to the Improvements) that are owned by Tenant and used in the operation of the business conducted on the Leased Premises.

3. Title and Condition.

a. The Leased Premises are demised and let subject to (i) the Permitted Encumbrances, (ii) all Legal Requirements and Insurance Requirements, including any existing violation of any thereof, and (iii) the

condition of the Leased Premises as of the commencement of the Term without representation or warranty by Landlord; it being understood and agreed, however, that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any thereof which for any reason may have expired.

b. LANDLORD LEASES AND WILL LEASE AND TENANT TAKES AND WILL TAKE THE LEASED PREMISES "AS IS", AND TENANT ACKNOWLEDGES THAT LANDLORD (WHETHER ACTING AS LANDLORD HEREUNDER OR IN ANY OTHER CAPACITY) HAS NOT MADE AND WILL NOT MAKE, NOR SHALL LANDLORD BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE LEASED PREMISES, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO ITS FITNESS FOR USE OR PURPOSE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, AS TO LANDLORD'S TITLE THERETO, OR AS TO VALUE, COMPLIANCE WITH SPECIFICATIONS, LOCATION, USE, CONDITION, MERCHANTABILITY, QUALITY, DESCRIPTION, DURABILITY OR OPERATION, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY TENANT. Tenant acknowledges that the Leased Premises are of its selection and that the Leased Premises have been inspected by Tenant and are satisfactory to it. In the event of any defect or deficiency in any of the Leased Premises of any nature, whether patent or latent, Landlord shall not have any responsibility or liability with respect thereto or for any incidental or consequential damages (including strict liability in tort). The provisions of this Paragraph 3 (b) have been (i) negotiated and are a material part of the consideration for this transaction, as the negotiated lease price and terms herein for the Leased Premises would have been re-negotiated and would have been higher and more stringent; (ii) contracted for in an 'arms-length' transaction wherein each of the parties

4

are/were of near equal bargaining power; (iii) duly and prominently pointed out, read by all parties, and fully understood by all parties (each party having or being advised to seek independent legal advice in interpreting the same); (v) were not the result of any unfair bargaining position, duress, coercion, threat or fraud; and (vi) were contracted for with the understanding that Tenant would rely solely upon Tenant's own experience, judgment, knowledge, inspection (by experts of Tenant's own choosing), investigation, appraisal, surveying, etc. Furthermore, the parties intended to negate any prior representations (whether puffing or otherwise - if not intentionally fraudulent) unless the same are included in the final documents as an express warranty, and which the parties thus disclaim any reliance upon any such oral representations and/or silence negotiated, and the foregoing provisions are intended to be a complete exclusion and negation of any warranties by Landlord, express or implied, with respect to any of the Leased Premises, arising pursuant to the Uniform Commercial Code as adopted by the State or any other law or regulation now or hereafter in effect or otherwise.

c. Landlord hereby assigns, without recourse or warranty whatsoever, to Tenant, all warranties, guaranties, and indemnities, express or implied, and similar rights which Landlord may have, if any, against any architect, manufacturer, seller, engineer, contractor, subcontractor, supplier, or builder with respect to any of the Leased Premises, including, but not limited to, any rights and remedies existing under contract or pursuant to the Uniform Commercial Code as adopted by the State (collectively, the "GUARANTIES"). Such assignment shall remain in effect until the termination of this Lease. Landlord shall also retain the right to enforce any Guaranties assigned in the name of Tenant upon the occurrence of an Event of Default. Landlord hereby agrees to execute and deliver at Tenant's expense such further documents, including powers of attorney, as Tenant may reasonably request in order that Tenant may have the full benefit of the assignment effected or intended to be effected by this Paragraph 3(d). Upon the termination of this Lease, the Guaranties shall automatically revert to Landlord. The foregoing provision of reversion shall be self-operative and no further instrument of reassignment shall be required. In confirmation of such reassignment Tenant shall execute and deliver promptly any certificate or other instrument that Landlord may reasonably request. Any monies collected by Tenant under any of the Guaranties after the occurrence of and during the continuation of an Event of Default shall be held in trust by Tenant and promptly paid over to Landlord; said monies will then be used by Landlord to cure (to the extent sufficient) any Event of Default for which the payment is applicable.

d. Landlord agrees to enter into, at Tenant's expense, such easements, covenants, waivers, approvals or restrictions for utilities, parking or other matters as desirable for operation of the Leased Premises or properties adjacent thereto (collectively, "EASEMENTS") as reasonably requested

by Tenant, subject to Lender's and Landlord's approval of the form thereof, not to be unreasonably withheld or delayed; provided, however, that no such Easement shall result in any material diminution in the value or utility of the Leased Premises for use as an Entertainment/Food Use (as hereinafter defined) and further provided that no such Easement shall render the use of the Leased Premises dependent upon any other property or condition the use of the Leased Premises upon the use of any other property, each of which Tenant shall certify to Landlord and Lender in writing delivered with Tenant's request with respect to such Easement. Tenant's request shall also include Tenant's written undertaking acknowledging that Tenant shall remain liable hereunder as principal and not merely as a surety or guarantor notwithstanding the

5

establishment of any Easement. Tenant agrees to reimburse Landlord upon demand for any and all expenses incurred by Landlord associated with the Easements.

e. Tenant agrees that Tenant is obligated to and shall perform all obligations of the owner of the Leased Premises under and pay all expenses which the owner of the Leased Premises may be required to pay in accordance with any reciprocal easement agreement or any other agreement or document of record now or in the future (if expressly consented to in writing by Tenant) affecting the Leased Premises (herein referred to collectively as the "REA"), and that Tenant shall comply with all of the terms and conditions of any REA during the Term of this Lease. Tenant further covenants and agrees to indemnify, defend, and hold harmless Landlord and Lender against any claim, loss, or damage suffered by Landlord or Lender by reason of Tenant's failure to perform any obligations or pay any expenses as required under any REA or comply with the terms and conditions of any REA as hereinabove provided during the Term of this Lease. Tenant agrees to reimburse Landlord or Lender upon demand for any and all expenses incurred by Landlord or Lender associated with the REAs.

4. Use of Leased Premises; Quiet Enjoyment.

a. Tenant may use the Leased Premises as an entertainment-recreation--amusement-restaurant-bar complex similar to other Dave & Buster's facilities in the United States providing goods and services, which goods and services may primarily include, but not be limited to, the provision, sale, rental, and use for pecuniary consideration, of virtual reality games, video games, so-called arcade games, rides and amusements, billiards, golf, play-for-fun blackjack, bowling, dance, nightclub and other amusements, food, beverages (alcoholic and non-alcoholic), party and catering facilities and play areas (some of which games, rides, etc. may provide for the opportunity to win prizes and/or other benefits, e.g., additional free games, by direct reward or through any other method, either directly or via a process of redemption) (any one or more of the foregoing uses is sometimes referred to herein as an "ENTERTAINMENT/FOOD USE"). The parties hereby recognize that this type of complex is in a constantly evolving state, as is the entertainment-recreation-amusement industry and that, provided Tenant operates the Dave & Buster's herein in a consistent manner as it is then operating substantially all other Dave & Buster's facilities in the United States, changes consistent with such evolution may occur. In no event shall the Leased Premises be used for any purpose (other than Entertainment/Food Use) that shall violate any Permitted Encumbrance or any covenants, REAs, restrictions, or agreements hereafter created by or consented to by Tenant applicable to the Leased Premises. Tenant agrees that with respect to the Permitted Encumbrances and any covenants, REAs, restrictions, or agreements hereafter created by or consented to by Tenant, Tenant shall observe, perform and comply with and carry out the provisions thereof required therein to be observed and performed by Landlord.

b. Subject to Tenant's rights under Paragraph 18 hereof, Tenant shall not permit any unlawful occupation, business, or trade to be conducted on the Leased Premises or any use to be made thereof contrary to applicable Legal Requirements or Insurance Requirements and shall not create any public or private nuisances. Subject to Tenant's rights under Paragraph 18, Tenant shall not use, occupy, or permit any of the Leased Premises to be

6

used or occupied, nor do or permit anything to be done in or on any of the Leased Premises, in a manner which would (i) make void or voidable any insurance which Tenant is required hereunder to maintain then in force with respect to any of the Leased Premises, (ii) affect the ability of Tenant to obtain any

insurance which Tenant is required to furnish hereunder, or (iii) cause any injury or damage to any of the Improvements unless pursuant to Alterations permitted under Paragraph 12 hereof.

c. Subject to all of the provisions of this Lease, so long as no Event of Default exists hereunder, Landlord covenants to do no act to disturb the peaceful and quiet occupation and enjoyment of the Leased Premises by Tenant.

5. Term.

a. Subject to the provisions hereof Tenant shall have and hold the Leased Premises for an initial term commencing on December 14, 2001 (the "COMMENCEMENT DATE"), and ending November 30, 2021 (the "EXPIRATION DATE") (such initial term, together with any Renewal Term, hereinafter defined, which comes into effect as hereinafter provided, is herein called the "TERM").

b. Provided Tenant is not in default hereunder and this Lease has not been terminated or Tenant's right to possession terminated pursuant to the provisions of Paragraphs 13(b) or 19, Tenant shall have the option to renew this Lease for four (4) consecutive five (5) year periods (collectively, the "RENEWAL TERMS" and individually, a "RENEWAL TERM"). Tenant shall give the Landlord written notice ("RENEWAL TERM NOTICE") of its intent to renew the Lease at least twelve (12) months but not less than three (3) months prior to the Expiration Date or the expiration date of the first, second or third Renewal Term, as applicable. Each Renewal Term shall be subject to all of the provisions of this Lease, and all such provisions shall continue in full force and effect, except that the Basic Rent for each Renewal Term shall be the amounts determined in accordance with the schedule set forth in Exhibit B attached hereto and made a part hereof. If Tenant shall fail to timely give a Renewal Term Notice, then all options with regard to subsequent Renewal Terms shall expire and be null and void, but only after Landlord delivers to Tenant a written notice of failure to deliver the Renewal Term Notice, and ten (10) days from the date of the written notice in which Tenant may cure the failure. Notwithstanding the foregoing, if Tenant has failed to deliver a Renewal Term Notice, and Landlord fails to send Tenant a notice of its failure to deliver a Renewal Term Notice, all options with regard to subsequent Renewal Terms (other than the Renewal Term covered by Tenant's possible cure) shall expire and be null and void, without any further action required of Landlord.

6. Rent.

a. Tenant shall pay to Landlord (or to Lender, if directed by Landlord), as minimum annual rent for the Leased Premises during the Term, the amounts set forth in Exhibit B attached hereto ("BASIC RENT"), commencing on the Commencement Date for the succeeding, prorated month, and continuing regularly on the first (1st) calendar day of each month thereafter during the Term, in advance (the said days being called the "BASIC RENT PAYMENT DATES"), and

7

shall pay the same at Landlord's address set forth below, or at such other place as Landlord from time to time may designate to Tenant in writing, in funds which at the time of such payment shall be legal tender for the payment of public or private debts in the United States of America and if required by Lender by wire transfer in immediately available federal funds to such account in such bank as Lender shall designate, from time to time.

b. Tenant shall pay and discharge before the imposition of any fine, lien, interest or penalty may be added thereto for late payment thereof, as Additional Rent, all other amounts and obligations which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added by the party to whom such payment is due for nonpayment or late payment thereof. In the event of any failure by Tenant to pay or discharge any of the foregoing, Landlord shall have all rights, powers and remedies provided herein, by law or otherwise, in the event of nonpayment of Basic Rent.

c. If any installment of Basic Rent is not paid by the fifth (5th) day after it is due, Tenant shall pay to Landlord, on demand, as Additional Rent, a late charge equal to five percent (5%) (the "Late Charge"). If not previously paid, the assessed Late Charge shall be added to the next maturing lease rental and first deducted therefrom.

d. Landlord and Tenant agree that this Lease is a true lease and does not represent a financing arrangement. Each party shall reflect the transactions represented by this Lease in all applicable books, records, and reports (including, without limitation, income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

7. Net Lease; Non-Terminability.

a. This is a net Lease and Basic Rent, Additional Rent, and all other sums payable hereunder by Tenant shall be paid, except as otherwise expressly set forth in this Lease, without notice, demand, setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction, or defense.

b. Except as otherwise expressly provided in this Lease, this Lease shall not terminate and Tenant shall not have any right to terminate this Lease during the Term or any Renewal Term. Except as otherwise expressly provided in this Lease, Tenant shall not be entitled to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction, or defense of or to Basic Rent, Additional Rent, or any other sums payable under this Lease; and except as otherwise expressly provided in this Lease, and except for Landlord's gross negligence or willful acts, the obligations of Tenant under this Lease shall not be affected by any interference with Tenant's use of any of the Leased Premises for any reason, including but not limited to the following: (i) any damage to or destruction of any of the Leased Premises by any cause whatsoever, (ii) any Condemnation, (iii) the prohibition, limitation, or restriction of Tenant's use of any of the Leased Premises, (iv) any eviction by paramount title or otherwise, (v) Tenant's acquisition of ownership of any of the Leased Premises other than pursuant to an express provision of this Lease, (vi) any default on the part of Landlord under this Lease or under any other agreement, (vii) any latent or other defect in, or any theft or loss of any

8

of the Leased Premises, (viii) the breach of any warranty of any seller or manufacturer of any of the Equipment, (ix) any violation of Paragraph 4(c) by Landlord, or (x) any other cause, whether similar or dissimilar to the foregoing, any present or future Law to the contrary notwithstanding. It is the intention of the parties hereto that the obligations of Tenant under this Lease shall be separate and independent covenants and agreements, and that Basic Rent, Additional Rent, and all other sums payable by Tenant hereunder shall continue to be payable in all events (or, in lieu thereof, Tenant shall pay amounts equal thereto), and that the obligations of Tenant under this Lease shall continue unaffected, unless this Lease shall have been terminated pursuant to an express provision of this Lease.

c. Tenant agrees that it shall remain obligated under this Lease in accordance with its provisions and that, except as otherwise expressly provided herein, it shall not take any action to terminate, rescind or avoid this Lease, notwithstanding (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Landlord, (ii) the exercise of any remedy, including foreclosure, under the Mortgage, or (iii) any action with respect to this Lease (including the disaffirmance hereof) which may be taken by Landlord under the Federal Bankruptcy Code or by any trustee, receiver or liquidator of Landlord or by any court under the Federal Bankruptcy Code or otherwise.

d. This Lease is the absolute and unconditional obligation of Tenant. Tenant waives all rights which are not expressly stated in this Lease but which may now or hereafter otherwise be conferred by Law to the extent permitted by applicable law and except for conditions arising from Landlord's negligent or willful acts (i) to quit, terminate or surrender this Lease or any of the Leased Premises, (ii) to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense of or to Basic Rent, Additional Rent or any other sums payable under this Lease, except as otherwise expressly provided in this Lease, and (iii) for any statutory lien or offset right against Landlord or its property.

8. Payment of Impositions; Compliance with Legal Requirements and Insurance Requirements.

a. i) Subject to the provisions of Paragraph 18

hereof relating to contests, Tenant shall, before interest or penalties are due thereon, pay and discharge (all of the following being herein collectively called the "IMPOSITIONS"): all taxes of every kind and nature (including real, ad valorem, personal property) on or with respect to the Leased Premises; all charges and/or taxes for any easement or agreement maintained for the benefit of the Leased Premises; all general and special assessments, levies, permits, inspection and license fees on or with respect to the Leased Premises; all water and sewer rents and other utility charges on or with respect to the Leased Premises; and all other public charges and/or taxes whether of a like or different nature, even if unforeseen or extraordinary, imposed or assessed upon or with respect to the Leased Premises, prior to or during the Term or any Renewal Term, against Landlord, Tenant, or any of the Leased Premises as a result of or arising in respect of the occupancy, leasing, use, maintenance, operation, management, repair, or possession thereof, or any activity conducted on the Leased Premises, or the Basic Rent or Additional Rent, including without

9

limitation, any gross income tax, sales tax, occupancy tax or excise tax levied by any governmental body on or with respect to such Basic Rent or Additional Rent. All signs, and other improvements placed on the Property by Tenant shall fully comply with the all applicable laws and/or regulations, and shall be neat and professional. Any sign permit fees charged for Tenant's "on premise" or "off premise" signs shall be paid by Tenant. Landlord shall have no duty to contest the validity of any law, regulation or ordinance pertaining to the Property, signs on same or business use thereof by Tenant. If received by Landlord, Landlord shall promptly deliver to Tenant any bill or invoice with respect to any Imposition.

ii) Nothing herein shall obligate Tenant to pay, and the term "IMPOSITIONS" shall exclude, federal, state or local (A) transfer taxes as the result of a conveyance by (or suffered by) Landlord, (B) franchise, capital stock or similar taxes if any, of Landlord, (C) income, excess profits or other taxes, if any, of Landlord, determined on the basis of or measured by its net income, or (D) any estate, inheritance, succession, gift, capital levy or similar taxes, unless the taxes referred to in clauses (B) and (C) above are in lieu of or a substitute for any other tax or assessment upon or with respect to any of the Leased Premises which, if such other tax or assessment were in effect at the commencement of the Term or any Renewal Term, would be payable by Tenant. In the event that any assessment against any of the Leased Premises may be paid in installments, Tenant shall have the option to pay such assessment in installments; and in such event, Tenant shall be liable only for those installments that become due and payable during the Term or any Renewal Term. Tenant shall prepare and file all tax reports required by governmental authorities that relate to the Impositions. Tenant shall deliver to Landlord and to Lender, within twenty (20) days after Landlord's written request therefor, copies of all settlements and notices pertaining to the Impositions which may be issued by any governmental authority and receipts for payments of all Impositions made during each calendar year of the Term or any Renewal Term. Interruption or curtailment of any utility service shall not entitle Tenant to any claim against Landlord for any abatement in rent, and shall not constitute either constructive or partial eviction; and Landlord shall have no obligation to restore same.

b. Subject to the provisions of Paragraph 18 hereof, Tenant shall promptly comply with and conform to all of the Legal Requirements and Insurance Requirements.

9. Liens; Recording and Title.

a. Subject to the provisions of Paragraph 18 hereof, Tenant shall not, directly or indirectly, create or permit to be created or to remain, and shall promptly discharge, any lien on the Leased Premises, on the Basic Rent, Additional Rent or on any other sums payable by Tenant under this Lease, other than the Mortgage, the Permitted Encumbrances and any mortgage, lien, encumbrance or other charge created by or resulting from any act or omission by Landlord or those claiming by, through or under Landlord (except Tenant). Notice is hereby given that Landlord shall not be liable for any labor, services, or materials furnished or to be furnished to Tenant, or to anyone holding any of the Leased Premises through or under Tenant, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to any of the Leased Premises.

b. Each of Landlord and Tenant shall execute, acknowledge and deliver to the other a written Memorandum of this Lease to be recorded in the appropriate land records of the jurisdiction in which the Leased Premises is located, in order to give public notice and protect the validity of this Lease. In the event of any discrepancy between the provisions of said recorded Memorandum of this Lease and the provisions of this Lease, the provisions of this Lease shall prevail.

c. Nothing in this Lease and no action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, or lien in or upon the estate of Landlord in any of the Leased Premises.

10. Indemnification and Waiver of Claims.

a. TENANT AGREES TO DEFEND, PAY, PROTECT, INDEMNIFY, SAVE AND HOLD HARMLESS LANDLORD AND LENDER FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, DAMAGES, PENALTIES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS, OR JUDGMENTS OF ANY NATURE WHATSOEVER, HOWSOEVER CAUSED (EXCEPT BY GROSS NEGLIGENCE OR WILLFUL ACTS OF LANDLORD OR LENDER), ARISING FROM THE LEASED PREMISES OR THE USE, NON-USE, OCCUPANCY, CONDITION, DESIGN, CONSTRUCTION, MAINTENANCE, REPAIR, OR REBUILDING OF THE LEASED PREMISES, AND ANY INJURY TO OR DEATH OF ANY PERSON OR PERSONS OR ANY LOSS OF OR DAMAGE TO ANY PROPERTY, REAL OR PERSONAL, IN ANY MANNER ARISING THEREFROM CONNECTED THEREWITH OR OCCURRING THEREON, WHETHER OR NOT LANDLORD AND LENDER HAVE OR SHOULD HAVE KNOWLEDGE OR NOTICE OF THE DEFECT OR CONDITIONS, IF ANY, CAUSING OR CONTRIBUTING TO SAID INJURY, DEATH, LOSS, DAMAGE OR OTHER CLAIM; EXCEPT TO THE EXTENT THAT ANY SUCH LIABILITY, LOSS, DAMAGE, PENALTY, COST, EXPENSE, CAUSE OF ACTION, SUIT, CLAIM, DEMAND OR JUDGMENT IS THE RESULT OF THE GROSS NEGLIGENCE OF LANDLORD OR LENDER OR THE INTENTIONAL WRONGFUL ACT OF LANDLORD OR LENDER. IN CASE ANY ACTION OR PROCEEDING IS BROUGHT AGAINST LANDLORD OR LENDER BY REASON OF ANY SUCH CLAIM AGAINST WHICH TENANT HAS AGREED TO DEFEND, PAY, PROTECT, INDEMNIFY, SAVE AND HOLD HARMLESS PURSUANT TO THE PRECEDING SENTENCE, TENANT COVENANTS UPON NOTICE FROM LANDLORD AND LENDER TO RESIST OR DEFEND LANDLORD IN SUCH ACTION, WITH THE EXPENSES OF SUCH DEFENSE PAID BY TENANT, WITH COUNSEL FOR SUCH DEFENSE BEING REASONABLY ACCEPTABLE TO LANDLORD OR LENDER (AS APPLICABLE), AND LANDLORD AND LENDER (IF APPLICABLE) WILL COOPERATE AND ASSIST IN THE DEFENSE OF SUCH ACTION OR PROCEEDING IF REASONABLY REQUESTED SO TO DO BY TENANT.

b. The obligations of Tenant under this Paragraph 10 shall survive for two years after the expiration or any termination of this Lease.

c. WAIVER OF CLAIMS. TENANT AND LANDLORD WAIVE ANY AND ALL CLAIMS THEY MAY HAVE AGAINST EACH OTHER OR THEIR SUCCESSORS AND ASSIGNS FOR ANY ALLEGED OR PROVEN TORTIOUS BREACH OF CONTRACT IN REGARDS TO THIS LEASE; AND THEY BOTH AGREE THAT ANY CLAIMS HEREON SHALL BE LIMITED TO DAMAGES OR REMEDIES PROVIDED STRICTLY UNDER CONTRACT LAW AND NOT UNDER

TORT LAW OR COMMON LAW. THIS PROVISION SHALL CONTROL EVEN THOUGH A PARTY IS FOUND GUILTY OF GROSS NEGLIGENCE OR WILLFUL OR WANTON CONDUCT OR OMISSIONS.

11. Maintenance and Repairs.

a. Except for any Alterations that Tenant is permitted to make pursuant to this Lease, Tenant shall at all times, including any Requisition period, put, keep, and maintain the Leased Premises (including, without limitation, the roof, landscaping, walls, footings, foundations, and structural components of the Leased Premises) and the Equipment in the same condition and order of repair as exists as of the date of this Lease, except for ordinary wear and tear, and shall promptly make all repairs and replacements of every kind and nature, whether foreseen or unforeseen, which may be required to be made upon or in connection with the Leased Premises in order to keep and maintain the Leased Premises in the order and condition required by this Paragraph 11 (a). Tenant shall do or cause others to do all shoring of the Leased Premises or of foundations and walls of the Improvements and every other act necessary or appropriate for preservation and safety thereof, by reason of or in connection with any excavation or other building operation upon any of the

Leased Premises, whether or not Landlord shall, by reason of any Legal Requirements or Insurance Requirements, be required to take such action or be liable for failure to do so. Landlord shall not be required to make any repair, whether foreseen or unforeseen, or to maintain any of the Leased Premises or Adjoining Property in any way, and Tenant hereby expressly waives the right to make repairs at the expense of the Landlord, which right may be provided for in any Law now or hereafter in effect. To the extent proceeds or condemnation awards are made available, nothing in the preceding sentence shall be deemed to preclude Tenant from being entitled to insurance proceeds or condemnation awards for Restoration pursuant to Paragraphs 13(c) and 14(g) of this Lease. Tenant shall, in all events, make all repairs for which it is responsible hereunder promptly, and all repairs shall be in a good, proper and workmanlike manner.

b. In the event that any Improvement shall violate any Legal Requirements or Insurance Requirements and as a result of such violation enforcement action is threatened or commenced against Tenant or with respect to the Leased Premises, then Tenant shall immediately notify Landlord of such matter, and, at the request of Landlord, either (i) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such violation, whether the same shall affect Landlord, Tenant or both, or (ii) take such action as shall be necessary to remove, construct or correct such violation, including, if necessary, to remove, construct or correct any Alteration. Any such repair or Alteration shall be made in conformity with the provisions of Paragraph 12 of this Lease.

c. If Tenant shall be in default under any of the provisions of this Paragraph 11, Landlord may after thirty (30) days written notice given to Tenant and failure of Tenant to cure during said period, but without notice in the event of an emergency, do whatever is necessary to cure such default as may be appropriate under the circumstances for the account of and at the expense of Tenant. Tenant shall be afforded additional time to remedy the default in the event it is actively pursuing the remedy of the default in a timely and expeditious manner. In

12

the event of an emergency Landlord shall notify Tenant of the situation by phone or other available communication. All reasonable sums so paid by Landlord and all reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment or incurring the expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

d. Tenant shall from time to time replace with other operational equipment or parts (the "REPLACEMENT EQUIPMENT") any of the Equipment (the "REPLACED EQUIPMENT") which shall have become worn out or unusable for the purpose for which it is intended, been taken by a Condemnation as provided in Paragraph 13, or been lost, stolen, damaged or destroyed as provided in Paragraph 14. Tenant shall repair at its sole cost and expense all damage to the Leased Premises caused by the removal of Equipment or Replaced Equipment or other personal property of Tenant or the installation of Replacement Equipment. All Replacement Equipment shall become the property of Landlord, shall be free and clear of all liens and rights of others and shall become a part of the Equipment as if originally demised herein.

e. Notwithstanding the foregoing provisions of Section 11, Tenant shall not be required to undertake replacement of the roof, walls, footings, foundations, and structural components of the Leased Premises during the last two (2) years of the Term or the Renewal Term(s), as the case may be, provided that Tenant shall be required to replace same if replacement is required due to Tenant's negligence or willful acts. In the event Tenant elects not to undertake such replacement, Landlord shall have no obligations to undertake replacement of the roof, walls, footings, foundations, and structural components of the Leased Premises during the last two (2) years of the Term or the Renewal Term(s), as the case may be.

f. Other than as expressly provided herein, Landlord shall have no obligations for repairs, replacements, or maintenance of the Leased Premises.

12. Alterations.

a. Tenant shall not make Alterations which would (after

the completion thereof) impair the structural integrity of the Leased Premises, without Landlord's written consent, which consent Landlord agrees not unreasonably to withhold or delay. Tenant may make any other Alterations without the prior written consent of the Landlord provided such Alterations comply with all of the provisions of the following sentence.

b. In the event that Landlord gives its prior written consent to any Alterations, Tenant agrees that in connection with any Alteration: (i) the fair market value of the Leased Premises shall not be lessened in any material respect after the completion of any such Alteration, or its structural integrity impaired; (ii) the Alteration and any Alteration theretofore made or thereafter to be made shall not in the aggregate reduce the gross floor area of the Improvements by more than ten percent (10%); (iii) all such Alterations shall be performed in a good and workmanlike manner, and shall be expeditiously completed in compliance with all

13

Legal Requirements; (iv) all work done in connection with any such Alteration shall comply with all Insurance Requirements; (v) Tenant shall promptly pay all costs and expenses of any such Alteration, and shall (subject to the provisions of Paragraph 18 hereof) discharge all liens filed against any of the Leased Premises arising out of the same; (vi) Tenant shall procure and pay for all permits and licenses required in connection with any such Alteration; (vii) all such Alterations shall be the property of Landlord and shall be subject to this Lease; and (viii) all Alterations shall be made (in the case of any Alteration the estimated cost of which in any one instance exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00)) under the supervision of an architect or engineer and, in accordance with plans and specifications which shall be submitted to Landlord (for informational purposes only) prior to the commencement of the Alterations.

13. Condemnation.

a. Tenant, promptly after obtaining knowledge of the institution of any proceeding for Condemnation, shall notify Landlord and Lender thereof and Landlord and Lender shall be entitled to participate in any Condemnation proceeding. Landlord, promptly after obtaining knowledge of the institution of any proceeding for Condemnation, shall notify Tenant and Lender thereof and Tenant and Lender shall have the right to participate in such proceedings. Subject to the provisions of this Paragraph 13 and Paragraph 15, Tenant hereby irrevocably assigns to Lender or to Landlord, in that order, any award or payment in respect of any Condemnation of Tenant's interest in the Leased Premises, except that (except as hereinafter provided) nothing in this Lease shall be deemed to assign to Landlord or Lender any award relating to the value of the leasehold interest created by this Lease or any award or payment on account of the Trade Fixtures, moving expenses and out-of-pocket expenses incidental to the move, if available, to the extent Tenant shall have a right to make a separate claim therefor against the condemner, it being agreed, however, that Tenant shall in no event be entitled to any payment that reduces the award to which Landlord or Lender are or would otherwise be entitled for the condemnation of Landlord's interest in the Leased Premises. Notwithstanding the foregoing, Tenant shall be entitled to any award or payment on account of Tenant's leasehold interest under this Lease only in the event of a Condemnation described in Paragraph 13(b) (i) (A) and then only to the extent that when such award, added to all other awards to which Tenant is entitled hereunder, is subtracted from the entire award in respect to all interests in the Leased Premises, the remainder exceeds the amount set forth on Exhibit C attached hereto and made a part hereof.

b. (i) (A) If (I) the entire Leased Premises or (II) at least ten percent (10%) of the applicable Land or the building constructed on the Land or any means of ingress, egress, or access to the Leased Premises, the loss of which even after Restoration would, in Tenant's reasonable business judgment, be substantially and materially adverse to the business operations of Tenant at the Leased Premises, shall be subject of a Taking by a duly constituted authority or agency having jurisdiction, then Tenant shall, not later than ninety (90) days after a Taking has occurred, serve notice ("TENANT'S TERMINATION NOTICE") upon Landlord and Lender of Tenant's intention to terminate this Lease on any Basic Rent Payment Date specified in such Tenant's Termination Notice, which date (the "TERMINATION DATE") shall be no sooner than the first Basic Rent Payment Date occurring at least thirty (30) days after the date of such Tenant's Termination Notice.

(B) In the event that during the Term or during the first twenty-four (24) months of the first Renewal Term Tenant shall serve a Tenant's Termination Notice upon Landlord, Tenant shall, as part of such Tenant's Termination Notice offer (which offer may be rejected by Landlord only with Lender's consent as set forth below in Paragraph 13(b) (i) (E) if the Leased Premises are then subject to a Mortgage) to purchase the Leased Premises and the award (or if no part of the Leased Premises shall remain, the entire award) for the applicable price (the "PURCHASE PRICE") computed in accordance with the schedule annexed hereto and marked Exhibit C plus all other amounts which may have accrued and be owing to Lender or Landlord under this Lease (the "ADDITIONS TO PURCHASE PRICE").

(C) If Landlord and Lender shall elect to reject Tenant's offer to purchase, Landlord shall give notice thereof to Tenant within thirty (30) days after the giving of Tenant's Termination Notice. Should said notices of Landlord and Lender rejecting Tenant's offer to purchase not be served within said period of thirty (30) days, then and in that event, the said offer shall be deemed rejected.

(D) Should an offer to purchase be rejected by Landlord and Lender, this Lease shall be terminated as above provided and the entire award made in the Condemnation proceeding with respect to the Leased Premises shall be paid to Lender or to Landlord.

(E) Unless an offer is deemed rejected based on lapse of time, Landlord's notice to reject Tenant's offer to purchase shall be void and of no effect unless accompanied by the written notice of Lender (if the Leased Premises are then subject to a Mortgage) to the effect that Lender also elects to reject Tenant's offer to purchase. Alternatively, if Lender elects to accept Tenant's offer to purchase by written notice to Tenant and Landlord delivered in accordance herewith, then, notwithstanding any notice by Landlord to the contrary, Tenant's offer to purchase shall be deemed accepted for all purposes hereof.

(ii) In the event that Landlord and Lender shall accept (or be deemed to have accepted) Tenant's offer to purchase, title shall close and the Purchase Price and Additions to Purchase Price shall be paid as hereinafter provided and in such event Tenant shall be entitled to and shall receive any and all awards with respect to the Leased Premises then or thereafter made in the Condemnation proceeding and Landlord shall assign (or in case of any award previously made, deliver to Tenant on the Closing Date) such award as may be made with respect to the Leased Premises. In the event Landlord and Lender shall accept Tenant's offer to purchase with respect to the Leased Premises (or such offer is deemed to have been accepted), title shall close thirty (30) days after the Termination Date hereinbefore defined (the "CLOSING DATE"), at noon at the local office of Landlord's counsel, or at such other time and place as the parties hereto may agree upon, this Lease shall be automatically extended to and including the Closing Date (or, if applicable, the extended Closing Date hereinafter described) and Tenant shall pay the Purchase Price and Additions to Purchase Price by transferring immediately available

funds to such account or accounts and in such bank or banks as Lender or Landlord, shall designate, upon delivery to Tenant of a special warranty deed conveying the Leased Premises and all other required documents including an assignment of any award in connection with the taking of the Leased Premises. The special warranty deed shall convey title, free from encumbrances other than (A) Permitted Encumbrances, (B) liens or encumbrances created or suffered by Tenant or arising by reason of the failure of Tenant to observe or perform any of the terms, covenants or agreements herein provided to be observed and performed by Tenant, (C) any installments of Impositions then affecting the Leased Premises, and (D) this Lease. The Purchase Price and Additions to

Purchase Price payable as hereinabove provided shall be charged or credited, as the case may be, on the Closing Date, to reflect adjustments of Basic Rent paid or payable to and including the Closing Date, apportioned as of the Closing Date. Tenant shall pay all conveyance, transfer, sales and like taxes required in connection with the purchase, regardless of who is required to pay such taxes under State or local law or custom (and Tenant shall also pay to Landlord any amount necessary to yield to Landlord a net amount equal to the entire Purchase Price and Additions to Purchase Price if as a matter of the Law of the State or locality such tax cannot be paid directly by Tenant). If there be any liens or encumbrances against the Leased Premises which Landlord is obligated to remove, upon request made a reasonable time before the Closing Date, Landlord shall provide at the Closing separate funds for the foregoing, payable to the holder of such lien or encumbrances. Landlord hereby appoints Lender, and any officer of Lender which is authorized by Lender at any time to exercise the powers granted herein, as Landlord's attorney-in-fact with full power of substitution, which appointment is irrevocable and coupled with an interest, for the purpose of taking such actions and executing and delivering such agreements, documents, deeds and other conveyance, certificates, closing statements and any and all other documents or instruments required to consummate the purchase by Tenant and sale by Landlord of the Leased Premises and award as provided herein and Tenant agrees to accept such appointment for the purpose of consummating such transactions.

(iii) In the event that after the first twenty-four (24) months of the first Renewal Term, Tenant shall serve a Tenant's Termination Notice upon Landlord, this Lease and the applicable Renewal Term hereof shall terminate on the Termination Date specified in the Termination Notice; and in such event the entire award to the made in the Condemnation proceeding shall be paid to Lender or to Landlord, in accordance with the Loan.

c. i) In the event of a Condemnation of any part of the Leased Premises which does not result in a Termination of this Lease, subject to the requirements of Paragraph 15, and subject to agreement by Landlord's Lender, the Net Award of such Condemnation shall be retained by Landlord subject to the provisions of (c)(ii) below; and promptly after such Condemnation, Tenant shall commence and diligently continue to restore the Leased Premises as nearly as possible to its value, condition and character immediately prior to such Condemnation, in accordance with the provisions of this Lease, including but not limited to the provisions of Paragraphs 11 (a), 12 and 15 (such restoration following a Condemnation and restoration following a casualty is, as the context shall require, herein called a "RESTORATION").

16

ii) Upon the payment to Landlord of the Net Award of a Taking which falls within the provisions of this Paragraph 13(c), Landlord shall, to the extent received, make that portion of the Net Award equal to the cost of Restoration (the "RESTORATION AWARD") available to Tenant for Restoration, in accordance with the provisions of Paragraph 15, and promptly after completion of the Restoration, the balance of the Net Award shall, to the extent consented to by Lender, be paid to Tenant and all Basic Rent, Additional Rent and other sums payable hereunder shall continue unabated and unreduced.

iii) In the event of a Requisition of the Leased Premises, Landlord shall apply the Net Award of such Requisition, to the extent available, to the installments of Basic Rent, Additional Rent or other sums payable by Tenant hereunder thereafter payable and Tenant shall pay any balance remaining thereafter. Upon the expiration of the Term, or any Renewal Term, any portion of such Net Award which shall not have been previously credited to Tenant on account of the Basic Rent and Additional Rent shall be retained by Landlord.

iv) In the event Landlord does not receive the Net Award of a Taking which falls within the provisions of this Paragraph 13(c) based on the fact that Lender elects under the Loan to retain such Net Award of a Taking, Tenant shall none the less commence and diligently continue to restore the Leased Premises as nearly as possible to its value, condition and character immediately prior to such Condemnation, in accordance with the provisions of this Lease, including but not limited to the provisions of Paragraphs 11 (a), 12 and 15.

d. Except with respect to an award or payment to which Tenant is entitled pursuant to the provisions of Paragraph 13(a), 13(b) and 13(c), no agreement with any condemner in settlement of or under threat of any Condemnation shall be made by either Landlord or Tenant without the written consent of the other, and of Lender, if the Leased Premises are then subject to a Mortgage, which consent shall not be unreasonably withheld or delayed.

14. Insurance.

a. Tenant shall maintain at its sole cost and expense the following insurance on the Leased Premises:

i) Insurance against loss or damage to the Improvements and Equipment under a fire and broad form of all risk extended coverage insurance policy (which shall include flood insurance if the Leased Premises is located within a flood hazard area and which shall include earthquake insurance if the Leased Premises is located in an area where earthquake insurance is customarily maintained for similar commercial properties). Such insurance shall be in amounts sufficient to prevent Landlord or Tenant from becoming a co-insurer under the applicable policies, and in any event in amounts not less than the actual replacement cost of the Improvements and Equipment (excluding footings and foundations and other parts of the Improvements which are not insurable) as determined from time to time at Lender's request but not more frequently than once in any 12-month period, by agreement of Landlord, Lender, and Tenant, or if not so agreed, at Tenant's expense, by the insurer or insurers

17

or by an appraiser approved by Landlord. Such insurance policies may contain reasonable exclusions and deductible amounts.

ii) Commercial general liability insurance (including contractual indemnity) against claims for bodily injury, death or property damage occurring on, in or about the Leased Premises, which insurance shall be written on a so-called "occurrence basis," and shall provide minimum protection with a combined single limit in an amount not less than Two Million Dollars (\$2,000,000.00) (or in such increased limits from time to time to reflect declines in the purchasing power of the dollar as Landlord may reasonably request) and excess liability coverage of Ten Million Dollars (\$10,000,000.00).

iii) Worker's compensation insurance covering all persons employed by Tenant on the Leased Premises in connection with any work done on or about any of the Leased Premises for which claims for death or bodily injury could be asserted against Landlord, Tenant or the Leased Premises.

iv) During periods of war or national emergency, war risk insurance in an amount not less than the actual replacement cost of the Improvements and Equipment (excluding footings and foundations and other parts of the Improvements which are not insurable), when and to the extent obtainable from the United States Government or an agency thereof at reasonable cost.

v) Insurance against loss or damage from explosion of any steam or pressure boilers or similar apparatus located in or about the Improvements in an amount not less than the actual replacement cost of the Improvements and Equipment (excluding footings and foundations and other parts of the Improvements which are not insurable).

vi) Such additional and/or other insurance with respect to the Improvements located on the Leased Premises and in such amounts as at the time is customarily carried by prudent owners or tenants with respect to improvements similar in character, location and use and occupancy to the Improvements located on the Leased Premises.

b. The insurance required by Paragraph 14(a) shall be written by companies having a claims paying ability rating by Standard & Poors of not less than A-, and all such companies shall be authorized to do an insurance business in the State, or otherwise agreed to by Landlord. The insurance policies (i) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof, and (ii) shall (except for the worker's compensation insurance referred to in Paragraph 14(a)(iii) hereof) name Landlord, Tenant, and any Lender as additional insured parties, as their

respective interests may appear. If said insurance or any part thereof shall expire, be withdrawn, become void by breach of any condition thereof by Tenant or become void or unsafe by reason of the failure or impairment of the capital of any insurer, Tenant shall immediately obtain new or additional insurance reasonably satisfactory to Landlord and Lender.

18

c. Each insurance policy referred to in clauses (i), (iv), (v), (and (vi) if requested by Lender) of Paragraph 14(a), shall contain standard non-contributory mortgage clauses in favor of any Lender which holds a Mortgage on the Leased Premises. Each policy shall provide that it may not be canceled except after thirty (30) days prior notice to Landlord and any Lender. Each policy shall also provide that any losses otherwise payable thereunder shall be payable notwithstanding (i) any act or omission of Landlord or Tenant which might, absent such provision, result in a forfeiture of all or a part of such insurance payment, or (ii) the occupation or use of any of the Leased Premises for purposes more hazardous than permitted by the provisions of such policy.

d. Tenant shall pay as they become due all premiums for the insurance required by this Paragraph 14, shall renew or replace each policy, and shall deliver to Landlord and Lender a certificate or other evidence (reasonably satisfactory to Lender and Landlord) of the existing policy and such renewal or replacement policy at least thirty (30) days prior to the Expiration Date (as hereinafter defined) of each policy. Each such policy shall provide that it shall not expire until the Landlord and the Lender shall receive a notice from the insurer to the effect that a policy will expire on a date (the "EXPIRATION DATE") which shall be thirty (30) days following the date of the receipt by Landlord and Lender of such notice. In the event of Tenant's failure to comply with any of the foregoing requirements of this Paragraph 14 within five (5) business days of the giving of written notice by Landlord to Tenant, Landlord shall be entitled to procure such insurance. Any sums expended by Landlord in procuring such insurance shall be Additional Rent and shall be repaid by Tenant, together with interest thereon at the Default Rate, from the time of payment by Landlord until fully paid by Tenant immediately upon written demand therefor by Landlord.

e. Anything in this Paragraph 14 to the contrary notwithstanding, any insurance which Tenant is required to obtain pursuant to Paragraph 14(a) may be carried under a "blanket" policy or policies covering other properties or liabilities of Tenant, provided that such "blanket" policy or policies otherwise comply with the provisions of this Paragraph 14. In the event any such insurance is carried under a blanket policy, Tenant shall deliver to Landlord and Lender evidence of the issuance and effectiveness of the policy, the amount and character of the coverage with respect to the Leased Premises and the presence in the policy of provisions of the character required in the above sections of this Paragraph 14.

f. In the event of any casualty loss exceeding \$100,000.00, Tenant shall give Landlord and Lender immediate notice thereof. Tenant shall adjust, collect and compromise any and all claims, with the consent of Lender and Landlord, not to be unreasonably withheld or delayed, and Landlord and Lender shall have the right to join with Tenant therein. Provided Lender shall consent thereto, if the estimated cost of Restoration or repair shall be One Hundred Thousand Dollars (\$100,000.00) or less, all proceeds of any insurance required under clauses (i), (iv), and (v) (and (vi) if requested by Lender) of Paragraph 14(a) hereof shall be payable to Tenant, provided that Tenant (or the guarantor of the Tenant's obligations under this Lease) at such time shall have a tangible net worth of not less than One Hundred Million Dollars (\$100,000,000.00) as determined in accordance with generally accepted accounting principles, consistently applied, and in all other events to a Trustee which shall be a federally insured bank or other financial institution, selected by Landlord and Tenant and reasonably satisfactory to

19

Lender (the "TRUSTEE"). If the Leased Premises shall be covered by a Mortgage, Lender, if it so desires, shall be the Trustee. Each insurer is hereby authorized and directed to make payment under said policies directly to such Trustee instead of to Landlord and Tenant jointly; and Tenant and Landlord each hereby appoints such Trustee as its attorney-in-fact to endorse any draft therefor for the purposes set forth in this Lease after approval by Tenant of

such Trustee, if Trustee is other than Lender. Except as stated in Paragraph 14(g) below, in the event of any casualty (whether or not insured against) resulting in damage to the Leased Premises or any part thereof, the Term or Renewal Term shall nevertheless continue and there shall be no abatement or reduction of Basic Rent, Additional Rent or any other sums payable by Tenant hereunder. The Net Proceeds of such insurance payment shall be retained by the Trustee and, promptly after such casualty, Tenant, as required in Paragraphs 11 (a) and 12, shall commence and diligently continue to perform the Restoration to the Leased Premises. Upon payment to the Trustee of such Net Proceeds, the Trustee shall, to the extent available, make the Net Proceeds available to Tenant for Restoration, in accordance with the provisions of Paragraph 15. Tenant shall, whether or not the Net Proceeds are sufficient for the purpose, promptly repair or replace the Improvements and Equipment in accordance with the provisions of Paragraph 11 (a) and the Net Proceeds of such loss shall thereupon be payable to Tenant, subject to the provisions of Paragraph 15 hereof. In the event that any damage or destruction shall occur at such time as Tenant shall not have maintained third-party insurance in accordance with Paragraph 14(a)(i), (iv), (v) or (vi), Tenant shall pay to the Trustee the amount of the proceeds that would have been payable had such insurance program been in effect (the "TENANT INSURANCE PAYMENT").

g. Notwithstanding anything to the contrary contained herein, if all or substantially all of the Leased Premises are damaged or destroyed by fire or other casualty which, in the Tenant's good faith and reasonable judgment renders the Leased Premises unsuitable for Restoration to allow continued use and occupancy by the Tenant, then Tenant may elect to terminate the Lease, but only if such election is made within ninety (90) days of the casualty. If Tenant timely elects to terminate the Lease, then (i) if during the initial Term, the Tenant shall make a rejectable offer to purchase the Leased Premises following the same procedures outlined in Paragraph 13(b) of this Lease, and (ii) if during any Renewal Term, the Lease shall terminate, and Tenant shall assign all insurance proceeds to the Landlord.

15. Restoration. Net Proceeds, Restoration Award and Tenant Insurance Payment (the aggregate of which being herein defined as the "RESTORATION FUND") shall be disbursed by the Trustee in accordance with the following conditions:

a. If the cost of Restoration will exceed \$250,000.00, prior to commencement of the Restoration, the architects, general contractor(s), and plans and specifications for the Restoration shall be approved by Landlord, which approval shall not be unreasonably withheld or delayed; and which approval shall be granted to the extent that the plans and specifications depict a Restoration which is substantially similar to the Improvements and Equipment which existed prior to the occurrence of the Casualty or Taking, whichever is applicable.

20

b. At the time of any disbursement, no Event of Default shall exist and no mechanics' or materialmen's liens shall have been filed and remain undischarged or unbonded, subject to the provisions of Paragraph 18 hereof.

c. Disbursements shall be made from time to time in an amount not exceeding the hard and soft cost of the work and costs incurred since the last disbursement upon receipt of (1) satisfactory evidence, including architects' certificates of the stage of completion, of the estimated cost of completion and of performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications, (2) partial releases of liens, and (3) other reasonable evidence of cost and payment so that Landlord can verify that the amounts disbursed from time to time are represented by work that is completed in place or delivered to the site and free and clear of mechanics' lien claims.

d. Each request for disbursement shall be accompanied by a certificate of Tenant describing the work, materials or other costs or expenses, for which payment is requested, stating the cost incurred in connection therewith and stating that Tenant has not previously received payment for such work or expense and the certificate to be delivered by Tenant upon completion of the work shall, in addition, state that the work has been substantially completed and complies with the applicable requirements of this Lease.

e. The Trustee may retain ten percent (10%) of the Restoration Fund until the Restoration is substantially complete.

f. The Restoration Fund shall be kept in a separate interest-bearing federally insured account by the Trustee or by Lender.

g. At all times the undisbursed balance of the Restoration Fund held by Trustee plus any funds contributed thereto by Tenant, at its option, shall be not less than the cost of completing the Restoration, free and clear of all liens.

h. In addition, prior to commencement of Restoration and at any time during Restoration, if the estimated cost of Restoration, as reasonably determined by Landlord, exceeds the amount of the Net Proceeds, the Restoration Award and Tenant Insurance Payment available for such Restoration, the amount of such excess shall be paid by Tenant to the Trustee to be added to the Restoration Fund or Tenant shall fund at its own expense the costs of such Restoration until the remaining Restoration Fund is sufficient for the completion of the Restoration. Any sum in the Restoration Fund which remains in the Restoration Fund upon the completion of Restoration shall be paid to Tenant. For purposes of determining the source of funds with respect to the disposition of funds remaining after the completion of Restoration, the Net Proceeds or the Restoration Award shall be deemed to be disbursed prior to any amount added by Tenant.

21

16. Subordination to Financing.

a. i) Subject to the provisions of Paragraph 16(a)(ii), and subject to the execution and timely delivery to Tenant by Lender of an instrument in accordance with Paragraph 16(d), Tenant agrees that this Lease shall at all times be subject and subordinate to the lien of any Mortgage, and Tenant agrees, upon demand, without cost, to execute instruments as may be required to further effectuate or confirm such subordination.

ii) Except as expressly provided in this Lease by reason of the occurrence of an Event of Default, Tenant's tenancy and Tenant's rights under this Lease shall not be disturbed, terminated, or otherwise adversely affected, nor shall this Lease be affected, by any default under any Mortgage, and in the event of a foreclosure or other enforcement of any Mortgage, or sale in lieu thereof, the purchaser at such foreclosure sale shall be bound to Tenant for the Term of this Lease and any Renewal Term, the rights of Tenant under this Lease shall expressly survive, and this Lease shall in all respects continue in full force and effect so long as no Event of Default has occurred and is continuing. Tenant shall not be named as a party defendant in any such foreclosure suit, except as may be required by law. Any Mortgage to which this Lease is now or hereafter subordinate shall provide, in effect, that during the time this Lease is in force insurance proceeds and Restoration Award shall be permitted to be used for Restoration in accordance with the provisions of this Lease.

b. Notwithstanding the provisions of Paragraph 16(a), the holder of any Mortgage to which this Lease is subject and subordinate shall have the right, at its sole option, at any time, to subordinate and subject the Mortgage, in whole or in part, to this Lease by recording a unilateral declaration to such effect, provided that such holder shall have agreed that during the time this Lease is in force, insurance proceeds and Restoration Award shall be permitted to be used for restoration in accordance with the provisions of this Lease.

c. At any time prior to the expiration of the Term, or any Renewal Term, Tenant agrees, at the election and upon demand of any owner of the Leased Premises, or of a Lender who has granted non-disturbance to Tenant pursuant to Paragraph 16(a) above, to attorn, from time to time, to any such owner or Lender, upon the terms and conditions of this Lease, for the remainder of the Term, or the applicable Renewal Term. The provisions of this Paragraph 16(c) shall inure to the benefit of any such owner or Lender, shall apply notwithstanding that, as a matter of law, this Lease may terminate upon the foreclosure of the Mortgage, shall be self-operative upon any such demand, and no further instrument shall be required to give effect to said provisions.

d. Each of Tenant, any owner and Lender, however, upon demand of the other, hereby agrees to execute, from time to time, instruments in

confirmation of the foregoing provisions of Paragraphs 16(a) and 16(c), reasonably satisfactory to the requesting party acknowledging such subordination, non-disturbance and attornment as are provided in such subsections and setting forth the terms and conditions of its tenancy.

22

17. Assignment or Subleasing.

a. Notwithstanding anything contained in this Lease to the contrary, Tenant may not assign its interest in this Lease without the prior written consent of Landlord, and Lender which may be withheld in the sole and absolute discretion of Landlord and Lender, unless such assignment is to a successor-by-merger or related or affiliated entity which, in either case, does not constitute a transfer of control of Tenant. For purposes hereof, an assignment shall include a transfer of control of Tenant. Tenant may not sublease the Demised Premises, in whole or in part, without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion.

b. Each sublease of the Leased Premises or any part thereof shall be subject and subordinate to the provisions of this Lease. No assignment or sublease shall affect or reduce any of the obligations of Tenant hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no assignment or sublease had been made. Notwithstanding any assignment or subletting Tenant shall continue to remain liable and responsible for the payment of the Basic Rent and Additional Rent and the performance of all its other obligations under this Lease. No assignment or sublease shall impose any obligations on Landlord under this Lease except as otherwise provided in this Lease. Tenant agrees that in the case of an assignment of the Lease, Tenant shall, within fifteen (15) days after the execution and delivery of any such assignment, deliver to Landlord (i) a duplicate original of such assignment in recordable form and (ii) an agreement executed and acknowledged by the assignee in recordable form wherein the assignee shall agree to assume and agree to observe and perform all of the terms and provisions of this Lease on the part of the Tenant to be observed and performed from and after the date of such assignment. In the case of a sublease, Tenant shall, within fifteen (15) days after the execution and delivery of such sublease, deliver to Landlord a duplicate original of such sublease.

c. Upon the occurrence of an Event of Default under this Lease, Landlord shall have the right to collect and enjoy all rents and other sums of money payable under any sublease of any of the Leased Premises, and Tenant hereby irrevocably and unconditionally assigns such rents and money to Landlord, which assignment may be exercised upon and after (but not before) the occurrence of an Event of Default. In the event Tenant collects any rents after an Event of Default which has not been cured in a timely basis, Tenant shall be deemed a constructive trustee of the rents for the benefit of Landlord or Lender as the case may be.

18. Permitted Contests.

a. After prior written notice to Landlord, Tenant shall not be required to (i) pay any Imposition, (ii) comply with any Legal Requirement, (iii) discharge or remove any lien referred to in Paragraphs 9 or 12, or (iv) take any action with respect to any violation referred to in Paragraph 11 (b), so long as Tenant shall contest, in good faith and at its sole cost and expense, the existence, the amount or the validity thereof, the amount of the damages caused thereby, or the extent of its or Landlord's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization

23

upon, the Imposition or lien so contested, (B) the sale, forfeiture or loss of any of the Leased Premises, any Basic Rent or any Additional Rent to satisfy the same or to pay any damages caused by the violation of any such Legal Requirement or by any such violation, (C) any interference with the use or occupancy of any of the Leased Premises, (D) any interference with the payment of any Basic Rent or any Additional Rent, and (E) the cancellation of any fire or other insurance policy.

b. In no event shall Tenant pursue any contest with respect to any Imposition, Legal Requirement, lien, or violation, referred to above in such manner that exposes Landlord or Lender to (i) criminal liability, penalty or sanction, (ii) any civil liability, penalty or sanction for which Tenant has not made provisions reasonably acceptable to Landlord and Lender or (iii) defeasance of its interest the Leased Premises.

c. Tenant agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion, except that Tenant shall, have the right to attempt to settle or compromise such contest through negotiations. Tenant shall pay and save Lender and Landlord harmless against any and all losses, judgments, decrees and costs (including all attorneys' fees and expenses) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof.

19. Conditional Limitations; Default Provisions.

a. The occurrence of any one or more of the following events (any such event being specified herein as a "failure" or "default") shall constitute an Event of Default under this Lease: (i) a failure by Tenant to make (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which had or might have the effect of preventing Tenant from complying with the provisions of this Lease): (x) any payment of Basic Rent which continues unremedied for a period of five (5) business days after written notice in accordance with Paragraph 21 below ("NONPAYMENT NOTICE") thereof given to Tenant by Landlord or Lender or Lender's designee, or (y) any payment of Additional Rent or other sum herein required to be paid by Tenant which continues unremedied for a period of ten (10) business days after a Nonpayment Notice is given to Tenant by Landlord or Lender or Lender's designee; (ii) failure by Tenant to perform and observe, or a violation or breach of, the provisions of Section 14 a. or Section 14 b, c, d, or e; (iii) failure by Tenant to perform and observe, or a violation or breach of, any other provision in this Lease and such default shall continue for a period of thirty (30) business days after written notice thereof is given by Landlord or Lender or Lender's designee to Tenant or if such default is of such a nature that it cannot reasonably be cured within such period of thirty (30) business days, such period shall be extended for such longer time as is reasonably necessary provided that Tenant has commenced to cure such default within said period of thirty (30) business days and is actively, diligently and in good faith proceeding with continuity to remedy such default; (iii) Tenant or any guarantor of Tenant's obligations hereunder shall (A) voluntarily be adjudicated a

24

bankrupt or insolvent, (B) or voluntarily consent to the appointment of a receiver or trustee for itself or for any of the Leased Premises, (C) voluntarily file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, or (D) voluntarily file a general assignment for the benefit of creditors; (iv) a court shall enter an order, judgment or decree appointing, with the voluntary consent of Tenant or any guarantor of Tenant's obligations hereunder, a receiver or trustee for Tenant or any guarantor of Tenant's obligations hereunder or for the Leased Premises or approving a petition filed against Tenant or any guarantor of Tenant's obligations hereunder which seeks relief under the bankruptcy or other similar laws of the United States or any State, and such order, judgment or decree shall remain in force, undischarged or unstayed, ninety (90) business days after it is entered; (v) Tenant or any guarantor of Tenant's obligations hereunder shall in any insolvency proceedings be liquidated or dissolved or shall voluntarily commence proceedings towards its liquidation or dissolution; or (vi) the estate or interest of Tenant in the Leased Premises shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred or such process shall not be vacated or discharged within ninety (90) business days after such levy or attachment.

b. If any Event of Default shall have occurred, Landlord shall have the right at its option, then or at any time thereafter, to do any one or more of the following without demand upon or notice to Tenant:

i) Landlord may give Tenant notice (following

the occurrence of an Event of Default) of Landlord's intention to terminate this Lease on a date specified in such notice (which date shall be no sooner than thirty (30) days after the date of the notice). Upon the date therein specified, unless the Event of Default for which the termination is effected has been cured by Tenant, the Term or any Renewal Term and the estate hereby granted and all rights of Tenant hereunder shall expire and terminate as if such date were the date hereinabove fixed for the expiration of the Term or any Renewal Term, but Tenant shall remain liable for all its obligations hereunder through the date hereinabove fixed for the expiration of the Term or any Renewal Term, including its liability for Basic Rent and Additional Rent as hereinafter provided.

ii) Landlord may, whether or not the Term or any Renewal Term of this Lease shall have been terminated pursuant to clause (i) above give Tenant notice (following the occurrence of an Event of Default) to surrender the Leased Premises to Landlord on a date specified in such notice (which date shall be no sooner than thirty (30) days after the date of the notice), at which time Tenant shall surrender and deliver possession of the Leased Premises to Landlord unless the Event of Default for which the termination is effected has been cured by Tenant. Upon or at any time after taking possession of the Leased Premises, Landlord may remove any persons or property therefrom. Landlord shall be under no liability for or by reason of any such entry, repossession or removal. No such entry or repossession shall be construed as an election by Landlord to terminate this Lease unless Landlord gives a written notice of such intention to Tenant pursuant to clause (i) above.

iii) After repossession of any of the Leased Premises pursuant to clause (ii) above, whether or not this Lease shall have been terminated pursuant to clause (i) above, Landlord may relet the Leased Premises or any part thereof to such tenant or tenants for

25

such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term or any Renewal Term) for such rent, on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its reasonable discretion, may determine; and Landlord shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be applied (A) first to the reasonable and actual expenses of such reletting and collection, including without limitation necessary renovation and alterations of the Leased Premises (but not including tenant improvement or construction allowances), reasonable and actual attorneys' fees and any reasonable and actual real estate commissions paid, and (B) thereafter toward payment of all sums due or to become due Landlord hereunder. If a sufficient amount to pay such expenses and sums shall not be realized or secured, then Tenant shall pay Landlord any such deficiency monthly, and Landlord may bring an action therefor as such monthly deficiency shall arise. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Leased Premises in excess of the rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Leased Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth above. Tenant agrees to pay Landlord, as Additional Rent, immediately upon demand, all reasonable expenses incurred by Landlord in obtaining possession, in performing repairs or maintenance in preparation for reletting any of the Leased Premises, including fees and commissions of attorneys, architects, agents and brokers.

iv) If Tenant shall fail to make payment of any installment of Basic Rent or any Additional Rent after the date when each such payment is due (after expiration of any applicable notice and cure periods), Tenant shall pay to Landlord, subject to the provisions of Section 28, a sum equal to two times the then current Prime Rate, as hereinafter defined, of the amount unpaid (the "DEFAULT RATE") computed from the date such payment of Basic Rent or Additional Rent was due to and including the date of payment. The term "PRIME RATE" shall mean the prime rate of interest published in the Wall Street Journal or its successor, from time to time.

v) Landlord may exercise any other right or remedy now or hereafter existing by law or in equity, other than the right to accelerate rent except as provided in Paragraph 19(c). Any or all of the above remedies may be exercised by Landlord in event of Tenant's breaches hereof, and two or more remedies may be exercised simultaneously or following each other, without being deemed an estoppel, waiver or election of remedies. In addition, should Tenant fail, refuse or neglect to make any payment or perform any act

required by the provisions of Section 14 a of this Lease or by Section 14.b, c, d or e of this Lease, then at any time thereafter, and without waiving or releasing any other right, remedy or recourse which Landlord may have because of same. Landlord or Lender may, but shall not be obligated to, make such payment or perform such act for the account of and at the expense of Tenant. All sums paid by Landlord or Lender pursuant to this Section 19 b(v), together with interest thereon at the maximum rate allowed by applicable law from the date of such payment or expenditure, shall constitute additions to the Additional Rent and shall be paid by Tenant upon demand.

c. In the event of any expiration or termination of this Lease or repossession of any of the Leased Premises by reason of the occurrence of an Event of Default, Tenant shall

26

pay to Landlord Basic Rent, Additional Rent and all other sums required to be paid by Tenant to and including the date of such expiration, termination or repossession and, thereafter, Tenant shall, until the end of what would have been the Term or any Renewal Term in the absence of such expiration, termination or repossession, and whether or not any of the Leased Premises shall have been relet, be liable to Landlord for and shall pay to Landlord as liquidated and agreed current damages: (1) Basic Rent, Additional Rent, and all other sums which would be payable under this Lease by Tenant in the absence of such expiration, termination or repossession, less (ii) the net proceeds, if any, of any reletting pursuant to paragraph 19(b)(iii), after deducting from such proceeds all of Landlord's reasonable expenses in connection with such reletting (including all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, employees' expenses, costs of Alteration and expenses of preparation for reletting). Tenant hereby agrees to be and remain liable for all sums aforesaid and Landlord may recover such damages from Tenant and institute and maintain successive actions or legal proceedings against Tenant for the recovery of such damages. Nothing herein contained shall be deemed to require Landlord to wait to begin such action or other legal proceedings until the date when the Term or any Renewal Term would have expired by limitation had there been no such Event of Default.

d. In the event of a default by Landlord under this Lease, Tenant shall be entitled to all remedies available to it at law and equity; PROVIDED, however, Landlord shall have no personal liability with respect to any obligations arising from or in connection with this Lease, and Tenant shall look solely to Landlord's interest in the Leased Premises for satisfaction of all remedies of Tenant arising therefrom. Notwithstanding the foregoing, Landlord shall not be liable to Tenant unless Landlord fails to perform and observe, or a violates or breaches any other provision in this Lease and such default shall continue for a period of thirty (30) business days after written notice thereof is given by Tenant to Landlord, with a copy provided to Lender or Lender's designee to Landlord or if such default is of such a nature that it cannot reasonably be cured within such period of thirty (30) business days, such period shall be extended for such longer time as is reasonably necessary provided that Landlord has commenced to cure such default within said period of thirty (30) business days and is actively, diligently and in good faith proceeding with continuity to remedy such default. If Landlord fails to cure said default, Tenant agrees that Lender shall have and additional thirty (30) business days after written notice thereof is given by Tenant to Landlord, or if such default is of such a nature that it cannot reasonably be cured within such period of thirty (30) business days, such period shall be extended for such longer time as is reasonably necessary provided that Lender has commenced to cure such default within said period of thirty (30) business days and is actively, diligently and in good faith proceeding with continuity to remedy such default.

20. Additional Rights of Landlord and Tenant.

a. No right or remedy conferred upon or reserved to Landlord in this Lease is intended to be exclusive of any other right or remedy; and each and every right and remedy shall be cumulative and in addition to any other right or remedy contained in this Lease. No delay or failure by Landlord or Tenant to enforce its rights under this Lease shall be construed as a waiver, modification or relinquishment thereof. In addition to the other remedies provided in this Lease, Landlord and Tenant shall be entitled, to the extent permitted by applicable law, to

injunctive relief in case of the violation or attempted or threatened violation of any of the provisions of this Lease, or to specific performance of any of the provisions of this Lease.

b. Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, any right and privilege which it or any of them may have under any present or future law to redeem any of the Leased Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof.

c. Each of Tenant and Landlord (herein called "PAYING PARTY") agrees to pay to the other party (herein called "DEMANDING PARTY") any and all reasonable costs and expenses incurred by the Demanding Party in connection with any litigation or other action instituted by the Demanding Party to enforce the obligations of the Paying Party under this Lease, to the extent that the Demanding Party has prevailed in any such litigation or other action. Any amount payable by Tenant to Landlord pursuant to this Paragraph 20(e) shall be due and payable by Tenant to Landlord as Additional Rent. No sum payable by Landlord to Tenant under this subparagraph will be payable or recoverable from any sums pledged or assigned (or intended to have been pledged or assigned) by Landlord to Lender, Tenant's right to recover such sums from Landlord being subordinate to the rights of Lender, such sums only being recoverable after payment to Lender in full of the Loan as constituted on the date hereof.

21. Notices. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given pursuant to the provisions of this Lease (collectively "NOTICE" or "NOTICES") shall be in writing and shall be deemed to have been given for all purposes (i) three (3) days after having been sent by United States mail, by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at its address as stated below, or (ii) one (1) day after having been sent by Federal Express, United Parcel or other nationally recognized overnight, air courier service.

To the Addresses stated below:

If to Landlord:

KAZA I, LTD.
c/o Mr. James A. Bieber
10803 Keystone Bend
Austin Texas 78750

With a copy to:

McLeroy, Alberts & Benjamin, P.C.
608 West 12th Street
Austin, Texas 78701
Attn: Christopher M. Benjamin

28

If to Tenant:

Dave & Buster's, Inc.
2481 Manana Drive
Dallas, Texas 75220
Attn: Legal Department

29

With a copy to:

Kane, Russell, Coleman & Logan, P.C.
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Attn: Scott A. Dyche

If any Lender shall have advised Tenant by Notice in the manner aforesaid that it is the holder of a Mortgage and states in said Notice its address for the

receipt of Notices, then simultaneously with the giving of any Notice by Tenant to Landlord, Tenant shall send a copy of such Notice to Lender in the manner aforesaid. For the purposes of this Paragraph 21, any party may substitute its address by giving fifteen (15) days' notice to the other party in the manner provided above. Any Notice may be given on behalf of any party by its counsel.

22. Estoppel Certificates. Landlord and Tenant shall at any time and from time to time, upon not less than twenty (20) days' prior written request by the other, execute, acknowledge and deliver to the other a statement in writing, certifying (i) that this Lease is unmodified and in full effect (or, if there have been modifications, that this Lease is in full effect as modified, setting forth such modifications), (ii) the dates to which Basic Rent, payable hereunder has been paid, (iii) that to the knowledge of the signer of such certificate no default or Event of Default by either Landlord or Tenant (v) the remaining Term or any Renewal Term hereof, (v) with respect to a certificate signed on behalf of Tenant, that to the knowledge of the signer of such certificate, there are no proceedings pending or threatened against Tenant before or by any court or administrative agency which if adversely decided would materially and adversely affect the financial condition and operations of Tenant or if any such proceedings are pending or threatened to said signer's knowledge, specifying and describing the same, and (vi) such other matters as may reasonably be requested by the party requesting the certificate. It is intended that any such statements may be relied upon by Landlord, Tenant, Lender, the recipient of such statements or their assignees or by any prospective purchaser, assignee or subtenant of the Leased Premises.

23. Surrender and Holding Over.

a. Upon the expiration or earlier termination of this Lease, Tenant shall peaceably leave and surrender the Leased Premises (except as to any portion thereof with respect to which this Lease has previously terminated) to Landlord. Provided Tenant is not in default hereunder, Tenant shall remove from the Leased Premises on or prior to such expiration or earlier termination the Trade Fixtures and personal property which is owned by Tenant or third parties other than Landlord, and Tenant, at its expense, shall, on or prior to such expiration or earlier termination, repair any damage caused by such removal. Trade Fixtures and personal property not so removed at the end of the Term or any Renewal Term shall become the property of Landlord, and Landlord may thereafter cause such property to be removed from the Leased Premises. The cost of removing and disposing of such property and repairing any damage to any of the Leased Premises caused by such removal shall be borne by Tenant. Landlord shall not in

30

any manner or to any extent be obligated to reimburse Tenant for any property which becomes the property of Landlord as a result of such expiration or earlier termination.

b. Any holding over by Tenant of the Leased Premises after the expiration or earlier termination of the Term or any Renewal Term of this Lease or any extensions thereof, with the consent of Landlord, shall operate and be construed as tenancy from month to month only, at one hundred ten percent (110%) of the Basic Rent reserved herein and upon the same terms and conditions as contained in this Lease. Notwithstanding the foregoing, any holding over without Landlord's consent shall entitle Landlord, in addition to collecting Basic Rent at a rate of one hundred fifty percent (150 %) thereof, to exercise all rights and remedies provided by law or in equity, including the remedies of Paragraph 19(b).

24. No Merger of Title. There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of any of the Leased Premises by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or an interest in this Lease or in such leasehold estate and (b) the fee estate or ownership of any of the Leased Premises or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease and (ii) the fee estate in or ownership of the Leased Premises or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

25. Definition of Landlord.

a. Except as provided in Section 12(d) and anything contained herein to the contrary notwithstanding, any claim based on or in respect of any liability of Landlord under this Lease shall be enforced only against the Landlord's interest in the Leased Premises and shall not be enforced against the Landlord individually or personally (except to the extent that it is necessary to name Landlord as a defendant in an action for equitable relief).

b. The term "LANDLORD" as used in this Lease so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners of the Leased Premises or holder of the Mortgage in possession at the time in question of the Leased Premises and in the event of any transfer or transfers of the title of the Leased Premises, the Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer and conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed.

26. Hazardous Substances.

31

a. Tenant agrees that it will not on, about, or under the Leased Premises, make, release, treat or dispose of any "hazardous substances" as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act, and the rules and regulations promulgated pursuant thereto, as from time to time amended, 42 U.S.C. Section 9601 et seq. (the "ACT"); but the foregoing shall not prevent the use of any hazardous substances in accordance with applicable laws and regulations. Tenant represents and warrants that it will at all times comply with the Act and any other federal, state or local laws, rules or regulations governing "Hazardous Materials". "HAZARDOUS MATERIALS" as used herein shall mean all chemicals, petroleum, crude oil or any fraction thereof, hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, asbestos containing materials and/or products, urea formaldehyde, or any substances which are classified as "hazardous" or "toxic" under the Act; hazardous waste as defined under the Solid Waste Disposal Act, as amended 42 U.S.C. Section 6901; air pollutants regulated under the Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq.; pollutants as defined under the Clean Water Act, as amended, 33 U.S.C. Section 1251, et seq., any pesticide as defined by Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. Section 136, et seq., any hazardous chemical substance or mixture or imminently hazardous substance or mixture regulated by the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601, et Seq., any substance listed in the United States Department of Transportation Table at 45 CFR 172.101; any chemicals included in regulations promulgated under the above listed statutes; any explosives, radioactive material, and any chemical or other substance regulated by federal, state or local statutes similar to the federal statutes listed above and regulations promulgated under such federal, state or local statutes.

b. To the extent required by the Act and/or any federal, state or local laws, rules or regulations governing Hazardous Materials, Tenant shall remove any hazardous substances (as defined in the Act) and Hazardous Materials (as defined above) whether now or hereafter existing on the Leased Premises actually placed upon the Leased Premises by Tenant or its agents, contractors, invitees or employees during the Term and any Renewal Term. In addition to, and without limiting Paragraph 10 of this Lease Tenant shall and hereby does agree to defend, indemnify and hold Lender and Landlord, their officers, directors, shareholders, partners, beneficial owners, members and employees, harmless from and against any and all causes of actions, suits, demands or judgments of any nature whatsoever, losses, damages, penalties, expenses, fees, claims, costs (including response and remedial costs), and liabilities, including, but not limited to, reasonable attorneys' fees and costs of litigation, arising out of or in any manner connected with (i) the violation of any applicable federal, state or local environmental law with respect to the Leased Premises or Tenant's or any other person's or entity's prior ownership of the Leased Premises; (ii) the "release" or "threatened release" of or failure to remove, as required by this Paragraph 26, "hazardous substances" (as defined in the Act) and Hazardous Materials (as defined above) at or from the Leased Premises or any portion or portions thereof, including any past or current release and any release or threatened release during the initial Term and any Renewal Term whether or not arising out of or in any manner connected with

Tenant's occupancy of the Leased Premises during the initial Term or Renewal Term.

c. The Tenant agrees that it will not install any underground storage tank at the Leased Premises without specific, prior written approval from the Landlord which consent

32

shall be in Landlord's sole and unfettered discretion. The Tenant agrees that it will not store combustible or flammable materials on the Leased Premises in violation of the Act or any other federal, state or local laws, rules or regulations governing Hazardous Materials.

27. Entry by Landlord. Landlord and its authorized representatives shall have the right upon reasonable notice (which shall be not less than two (2) business days except in the case of emergency) to enter the Leased Premises at all reasonable business hours (and at all other times in the event of an emergency): (a) for the purpose of inspecting the same or for the purpose of doing any work under Paragraph 11 (c), and may take all such action thereon as may be necessary or appropriate for any such purpose (but nothing contained in this Lease or otherwise shall create or imply any duty upon the part of Landlord to make any such inspection or do any such work), and (b) for the purpose of showing the Leased Premises to prospective purchasers and mortgagees and, at any time within six (6) months prior to the expiration of the Term (or any Renewal Term) of this Lease for the purpose of showing the same to prospective tenants. No such entry shall constitute an eviction of Tenant but any such entry shall be done by Landlord in such reasonable manner as to minimize any disruption of Tenant's business operation.

28. No Usury. The intention of the parties being to conform strictly to the applicable usury laws, whenever any provision herein provides for payment by Tenant to Landlord of interest at a rate in excess of the legal rate permitted to be charged, such rate herein provided to be paid shall be deemed reduced to such legal rate.

29. Separability. Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement, and the breach of an such covenant or agreement by Landlord shall not discharge or relieve Tenant from its obligation to perform the same. If any term or provision of this Lease or the application thereof to any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

30. Competition.

a. Tenant agrees that it shall not, during the Term of the Lease and any Renewal Term, either on its own or through any person, corporation, partnership, joint stock association, trust or other firm or entity which controls Tenant or is controlled by Tenant or is under common control with Tenant (and also, in the event Tenant is a corporation, if any officer or director thereof or shareholder owning more than ten percent (10%) of the outstanding stock thereof, or parent, subsidiary or related or affiliated corporation) either directly or indirectly, commence operation of any business similar to the business of Tenant in the Leased Premises, or in any other manner compete with the business provided herein to be conducted by Tenant at the Leased Premises, within a radius of five (5) miles of the Leased Premises, which Tenant acknowledges is a reasonable area for the purpose of this provision.

33

b. Notwithstanding Section 30(a), so long as no uncured Event of Default exists under this Lease, the provisions of Section 30(a) shall not apply.

31. Miscellaneous.

a. The paragraph headings in this Lease are used only for convenience in finding the subject matters and are not part of this Lease or

to be used in determining the intent of the parties or otherwise interpreting this Lease.

b. As used in this Lease the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (i) "including," shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, agreements, covenants and/or conditions"; (iii) "lien" shall mean "lien, charge, encumbrance, title retention agreement, pledge, security interest, mortgage and/or deed of trust"; and (iv) "obligation" shall mean "obligation, duty, agreement, liability, covenant or condition".

c. Any act which Landlord is permitted to perform under this Lease may be performed at any time and from time to time by Landlord or any person or entity designated by Landlord. Any act which Tenant is required to perform under this Lease shall be performed at Tenant's sole cost and expense.

d. This Lease may be modified, amended, discharged or waived only by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

e. The covenants of this Lease shall run with the Land and bind Tenant, the successors and assigns of Tenant and all present and subsequent encumbrances and subtenants of any of the Leased Premises, and shall inure to the benefit of and bind Landlord, its successors and assigns.

f. This Lease will be simultaneously executed in several counterparts, each of which when so executed and delivered shall constitute an original, fully enforceable counterpart for all purposes.

g. This Lease shall be governed by and construed according to the laws of the State.

h. Wherever the consent or approval of Landlord is required hereunder, Landlord agrees that it will not unreasonably withhold or delay such consent or approval, unless otherwise expressly stated herein.

i. The parties hereto warrant that the terms herein are intended to strictly comply with all applicable laws, including those federal and state consumer, commercial and

34

credit code laws that may be applicable. Any violation thereof shall be deemed to have been made by bona fide error and to be a mutual mistake, requiring immediate reformation of this contract to fully comply with such laws. Said illegal provision shall be deemed amended ab initio to comport with the applicable laws. Further, Tenant shall fully comply with all felony criminal laws, the violation of which and conviction of same, if occurring on the premises, can at Landlord's option, amount to a forfeiture of this Lease. In particular, no illegal gambling or illegal drug activity shall be conducted on the premises.

j. By signing this Lease, the respective parties REPRESENT and WARRANT to the other party that it has the full power and authority to execute this Lease and thus bind the parties named herein. However, if counsel for either party reasonably requests verification of the other signer's authority (corporate resolution, etc.), the party receiving said request shall timely present the required documentation.

32. Additional Rent. The term "ADDITIONAL RENT" as used herein includes all amounts, costs, expenses, liabilities and obligations (including but not limited to Tenant's obligation to pay any Net Awards or Purchase Price hereunder) which Tenant is required to pay pursuant to the terms of this Lease other than Basic Rent.

IN WITNESS WHEREOF, Landlord and Tenant have caused this instrument to be executed under seal as of the day and year first above written.

35

LANDLORD:

KAZA I, LTD., a Texas limited partnership

By: AMCAM, INC., a Texas corporation
Its: General Partner

By: /s/ James A. Bieber

James A. Bieber
Its: President

TENANT:

DAVE & BUSTER'S I, L.P.,
a Texas limited partnership

By: Dave & Buster's, Inc.,
a Missouri corporation, general partner

By: /s/ John S. Davis

Name: John S. Davis

Title: Vice President

36

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

TRACT I

Being a 4.6716 acre tract of land situated in the Robert Vince Survey, Abstract 77, City of Houston, Harris County, Texas, and being a portion of Lots 103, 104 and 105 and all of Lots 106 and 107 of Glenhaven Estates as recorded by plat in Volume 16, Page 71 of the Map Records of Harris County, Texas, together with a portion of Lots 112, 113 and 114 of Glenhaven Estates, Section 2 as recorded by plat in Volume 19, Page 53 of the Map Records of Harris County, Texas, also being the same tract of land described in the Special Warranty Deed to EBE Realty, Inc. recorded under Harris County Clerk's File Number M850749, save and except that certain .0051 of an acre tract described in Quitclaim Deed from EBE Realty, Inc. to New RichFountain Properties, Inc. recorded under Harris County Clerk's File Number N466304, said 4.6716 acre tract of land being more particularly described as follows;

BEGINNING, at a 1 inch iron pipe found at the Northeast corner of said Lot 107 and on the south right-of-way line of Fairdale Lane (60' Right-Of-Way);

THENCE, with the easterly line of said Lot 107, South 02 degrees 22 minutes 42 seconds East, a distance of 400.00 feet to a 5/8 inch iron rod found for the southeast corner of Lot 107;

THENCE, North 87 degrees 27 minutes 51 seconds East, a distance of 15.00 feet to a 5/8 inch iron rod found for the northeast corner of said Lot 112, Glenhaven Estates, Section 2;

THENCE, with the easterly line of said Lot 112, South 02 degrees 32 minutes 09 seconds East a distance of 59.10 feet to a 5/8 inch iron rod with cap found for the corner in the northerly right-of-way line of Richmond Avenue (a 120 foot wide right-of-way), and the beginning of a non-tangent curve to the right;

THENCE, with the northerly right-of-way line of Richmond Avenue and said non-tangent curve to the right having a radius of 2000.00 feet, through a central angle of 05 degrees 19 minutes 04 seconds, a chord bearing of North 83 degrees 18 minutes 51 seconds West, a chord distance of 185.56 feet and an arc length of 185.63 feet to a 5/8 inch iron rod with cap found;

THENCE, continuing with the northerly right-of-way line of Richmond Avenue, North 80 degrees 39 minutes 19 seconds West, a distance of 116.39 feet to a 5/8 inch iron rod with cap found and the beginning of a curve to the left;

THENCE, northwesterly continuing with the northerly right-of-way line of Richmond Avenue, and with said curve to the left having a radius of 2120.00 feet, a central angle of 05 degrees 39 minutes 51 seconds, a chord bearing of North 83 degrees 29 minutes 15 seconds West, a chord

37

distance of 209.50 feet and an arc length of 209.58 feet to a 5/8 inch iron rod with cap found for corner in the westerly line of the East one-half of said Lot 103, Glenhaven Estates, from which a found 5/8 inch iron rod with cap bears North 87 degrees 03 minutes 34 seconds West, 1.52 feet;

THENCE North 02 degrees 32 minutes 09 seconds West, departing the northerly right-of-way line of said Richmond Avenue with the westerly line of the East one-half of said Lot 103, a distance of 372.45 feet to a 5/8 inch iron rod found in the southerly right-of-way line of Fairdale Lane;

THENCE with the southerly right-of-way line of Fairdale Lane, North 87 degrees 27 minutes 51 seconds East, a distance of 490.05 feet to the POINT OF BEGINNING and containing 4.6716 acres (203,499 sq. ft.) of land.

TRACT II

Being a 0.9978 of an acre tract of land situated in the Robert Vince Survey, Abstract 77, City of Houston, Harris County, Texas, and being all of Lot 59 of Glenhaven Estates as recorded in Volume 16, Page 71 of the Map records of Harris County, Texas, also being the same tract of land described in the General Warranty Deed to EBE Realty, Inc. recorded under Harris County Clerk's File Number N564031, said 0.9978 of an acre tract of land being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod with cap found, from which a found 5/8 inch iron rod bent bears North 29 degrees 19 minutes 49 seconds West, 0.38 feet, in the northerly right-of-way line of Fairdale Lane (60 foot right-of-way) for the southeast corner of said Lot 59;

THENCE, with said northerly right-of-way line, South 87 degrees 27 minutes 51 seconds West, a distance of 108.90 feet to a 5/8 inch iron rod with cap found for the southwest corner of said Lot 59, from which a found 5/8 inch iron rod with cap bears North 20 degrees 58 minutes 38 seconds West, 0.98 feet;

THENCE, departing said northerly right-of-way line, North 02 degrees 13 minutes 03 seconds West, a distance of 399.77 feet to a 5/8 inch iron rod with cap found at the corner common to Lots 58, 59, and 42 and the southwest corner of Winsome Apartments as recorded in Volume 260, Page 24 of the Harris County Map Records;

THENCE, North 87 degrees 36 minutes 21 seconds East, with the line common to said Lot 59 and said Winsome Apartments, a distance of 108.63 feet to the northeast corner of herein described tract, the southeast corner of said Winsome Apartments and the northwest corner of Lot 60 of said Glenhaven Estates said and to a found 5/8 inch iron rod with cap;

THENCE, South 02 degrees 15 minutes 20 seconds East, with the common line of said Lots 59 and 60, a distance of 399.50 feet to the POINT OF BEGINNING and containing 0.9978 of one acre (43,465 sq. ft.).

38

EXHIBIT B

Primary Initial Term: Twenty (20) years

Number of Consecutive Renewal Terms: Four (4) (subject to Paragraph 5c)

Duration of each Renewal Term: Five (5) years

1. Basic Rent from the Commencement Date through the first anniversary of the Commencement Date shall be \$1,009,355.00, payable in monthly installments of \$84,112.92 each.

2. Basic Rent shall increase annually on each anniversary of the Commencement Date by 1.35%, through and including any Renewal Terms. For example, Basic Rent for the first year after the first anniversary shall be \$1,022,981.00, payable in monthly installments of \$85,248.42 each. Basic Rent for the first year after the second anniversary shall be \$1,036,791.00, and so on.

39

EXHIBIT C

Casualty and Condemnation Purchase Price

\$8,777,000

40

AGREEMENT OF SALE AND PURCHASE

by and between

D & B REALTY HOLDING, INC.,

a Missouri corporation,

as Seller

and

LANDFAIR, LLC,

a California limited liability company

as Purchaser

Marietta, Georgia

TABLE OF CONTENTS

	PAGE
ARTICLE I. Sale and Purchase: Property.....	1
Section 1.1 Sale and Purchase.....	1
ARTICLE II. Consideration.....	2
Section 2.1 Purchase Price & Financing.....	2
Section 2.2 Earnest Money.....	3
ARTICLE III. Survey.....	3
Section 3.1 Survey.....	3
ARTICLE IV. Title.....	4
Section 4.1 Title Commitment.....	4
ARTICLE V. Inspection.....	5
Section 5.1 Inspection Period.....	5
Section 5.2 Document Review.....	6
Section 5.3 Inspection Obligations.....	7
Section 5.4 Right of Termination.....	8
Section 5.5 Property Conveyed "AS IS".....	9
Section 5.6 Investigative Studies.....	12
Section 5.7 Purchaser Represented by Counsel.....	12
ARTICLE VI. Closing.....	12
Section 6.1 Closing Date.....	12
Section 6.2 Closing Matters.....	12
Section 6.3 Closing Costs.....	14
Section 6.4 Real Estate Commission.....	14
Section 6.5 Conditions Precedent to Seller's Obligations.....	15
Section 6.6 Conditions Precedent to Purchaser's Obligations.....	15
ARTICLE VII. Remedies.....	16
Section 7.1 Seller's Remedies.....	16
Section 7.2 Purchaser's Remedies.....	16
Section 7.3 Attorneys' Fees.....	16
Section 7.4 Disposition of Earnest Money.....	16
17	
ARTICLE VIII. Representations, Warranties, and Covenants.....	17
Section 8.1 Purchaser's Representations and Warranties.....	17
Section 8.2 Seller's Representations and Warranties.....	17
Section 8.3 Seller's Covenants.....	20
Section 8.4 Survival of Representations and Warranties.....	21
Section 8.5 Knowledge Standard.....	22
ARTICLE IX. Condemnation.....	22
Section 9.1 Condemnation.....	22
ARTICLE X. Risk of Loss.....	23
Section 10.1 Risk of Loss.....	23
Section 10.2 Loss.....	23

ARTICLE XI. Miscellaneous.....	24
Section 11.1 Entire Agreement.....	24
Section 11.2 Agreement Binding on Parties; Assignment.....	24
Section 11.3 Effective Date.....	24
Section 11.4 Notice.....	24
Section 11.5 Time of the Essence.....	26
Section 11.6 Place of Performance.....	26
Section 11.7 Currency.....	26
Section 11.8 Section Headings.....	26
Section 11.9 Obligations.....	26
Section 11.10 Business Days.....	26
Section 11.11 No Recordation.....	27
Section 11.12 Multiple Counterparts.....	27
Section 11.13 Severability.....	27
Section 11.14 Taxpayer ID.....	27
Section 11.15 Section 1031 Exchange.....	27

Exhibits

Exhibit A	-	Legal Description of Land
Exhibit B	-	Deed
Exhibit C	-	Bill of Sale
Exhibit D	-	Certificate of Non-Foreign Status
Exhibit E	-	Assignment of Warranties
Exhibit F	-	Lease
Exhibit G	-	Note

AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT OF SALE AND PURCHASE (this "AGREEMENT") is made by and between D & B REALTY HOLDING, INC., a Missouri corporation (the "SELLER"), and LANDFAIR, LLC, a California limited liability company (the "PURCHASER").

W I T N E S S E T H:

WHEREAS, Seller desires to sell and Purchaser desires to purchase the property described in Section 1.1 below, on the terms and conditions hereinafter set forth;

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

ARTICLE I.
SALE AND PURCHASE: PROPERTY

Section 1.1 Sale and Purchase.

Seller agrees to sell and convey unto Purchaser, and Purchaser agrees to purchase and accept from Seller, subject only to the Permitted Exceptions (as defined in Section 4.1(c)) and the terms, covenants, conditions, and provisions herein set forth, the following:

- (a) All of that certain land more particularly described on Exhibit A attached hereto (the "LAND"), including all structures, improvements, and fixtures (the "IMPROVEMENTS") thereon. The Improvements consist of an approximately 53,314 square foot, single story "Dave & Buster's" entertainment complex. The Land and the Improvements are sometimes referred to herein collectively as the "REAL PROPERTY";
- (b) All right, title, and interest, if any, of Seller, in and to any land lying in the bed of any dedicated street, road, or access way, opened or proposed, in front of, at a side of or adjoining the Real Property and any easements, rights-of-way or licenses of any kind relating to the Real Property (the "PROPERTY RIGHTS");
- (c) All right, title, and interest of Seller, reversionary or otherwise, in and to all easements in or upon the Land, mineral rights, water rights, water

stock, and all other rights, privileges, entitlements and appurtenances belonging or in anywise pertaining to the ownership, management or operation of the Real Property, if any (the "APPURTENANCES");

-1-

- (d) Any and all equipment, machinery, and other items of personal property owned by Seller and presently affixed or attached to, placed or situated upon the Real Property and used in connection with the ownership, operation and occupancy of the Real Property, but specifically excluding any items of personal property owned by the Tenant (as defined in Section 6.2 (viii)) and/or any third party (the "PERSONALTY");
- (e) All right, title, and interest, if any, of Seller in and to any and all transferable licenses, permits, certificates, approvals, authorizations, variances, and consents (the "PERMITS") issued or granted by governmental or quasi-governmental bodies, officers, or authorities with respect to the ownership of the Real Property;
- (f) All warranties and guaranties covering any of the Improvements, if any (the "WARRANTIES");
- (g) Intentionally Omitted;
- (h) Seller's interest in all plans, specifications, drawings, reports, studies, and other similar matters, relating to the Land and in the possession or control of Seller or Seller's agents or affiliates (the "PLANS").

The items described in (a) through (h) of this Section 1.1 are hereinafter collectively called the "PROPERTY".

ARTICLE II.
CONSIDERATION

Section 2.1 Purchase Price & Financing.

- (a) The purchase price (the "PURCHASE PRICE") to be paid by Purchaser to Seller for the sale and conveyance of the Property is Eight Million Three Hundred Ninety Thousand and No/100 Dollars (\$8,390,000), plus or minus any net prorations or closing costs payable or chargeable to Purchaser hereunder, which is payable to Seller at the closing of the transaction contemplated hereby (the "CLOSING"). Purchaser shall pay the Purchase Price at the Closing as follows: (i) Five Million Eight Hundred Seventy Three Thousand and No/100 Dollars (\$5,873,000) by wire transfer of funds and (ii) Two Million Five Hundred Seventeen Thousand and No/100 Dollars (\$2,517,000) by delivery of a promissory note (the "NOTE") in substantially the form attached hereto as Exhibit G.

-2-

Section 2.2 Earnest Money.

- (a) It is a condition precedent to the effectiveness of this Agreement that within three (3) days of the execution of this Agreement by Purchaser, Purchaser shall deposit with Hexter-Fair Title Company, 8333 Douglas Avenue, Suite 130, Dallas, Texas 75225, Attn: Carol Erick (the "CLOSING AGENT"), by wire transfer or delivery of a cashier's check, immediately available federal funds in the amount of Fifty

Thousand Dollars (\$50,000) (along with any interest accrued thereon, the "EARNEST MONEY").

- (b) On the Closing Agent's receipt of the Earnest Money, the Closing Agent shall deposit such Earnest Money into an interest-bearing money market account maintained at a federally insured bank or savings and loan association located in Dallas County, Texas. Such account shall have no penalty for early withdrawal. Notwithstanding anything to the contrary contained elsewhere in this Agreement, \$100.00 of the Earnest Money shall serve as independent consideration for this Agreement (the "INDEPENDENT CONSIDERATION"), and shall be non-refundable for any reason. If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Earnest Money shall be credited against the Purchase Price at Closing. All interest earned shall be reported to the Internal Revenue Service as income of Purchaser and Purchaser shall promptly execute all forms reasonably requested by the Closing Agent with respect thereto (except if Seller is entitled to retain the Earnest Money under Section 7.1, in which case the interest earned will be reported as income of the Seller).
- (c) The balance of the Purchase Price, as adjusted by the prorations and credits specified herein, less the Earnest Money and less the amount of the Note, shall be paid on the Closing Date in the manner set forth in Section 6.2.

ARTICLE III.
SURVEY

Section 3.1 Survey.

Seller has delivered to Purchaser a true, correct and complete copy of the as-built survey (the "SURVEY") of the Real Property in Seller's possession. Purchaser shall be solely responsible for updates to the Survey.

-3-

ARTICLE IV.
TITLE

Section 4.1 Title Commitment.

- (a) Delivery. If not previously delivered, within one (1) day after the Effective Date, Seller shall cause Lawyers Title Insurance Corporation (the "TITLE COMPANY"), acting through the Closing Agent, to furnish to Purchaser a title commitment (the "COMMITMENT") along with legible, true and complete copies of all documents referred to in the Commitment, including, without limitation, plats, deeds, restrictions and easements, by the terms of which the Title Company agrees to issue to Purchaser at Closing an ALTA Extended Coverage Owner's Policy of Title Insurance (the "TITLE POLICY") in the amount of the Purchase Price and insuring Purchaser's fee simple absolute title to the Real Property to be good marketable and indefeasible, subject only to the Permitted Exceptions.
- (b) Objections and Cure. If the Title Commitment or Survey or their updates disclose exceptions to title or any other matter reasonably objectionable to Purchaser, Purchaser shall so notify Seller in writing (the "OBJECTION NOTICE") on or before the fifth (5th) day following the date of the last to be received of the Title Commitment and updated Survey, and Seller shall have two (2) days from the date of

Seller's actual receipt of the Objection Notice in which it may, but shall have no obligation to have each such objectionable exception to title or Survey removed or correct each such other matter, in each case to the reasonable satisfaction of Purchaser; provided, however, that Seller shall pay off and discharge the following (collectively "DISCHARGEABLE LIENS"): (a) all mortgage liens and deeds of trust encumbering the Property or any portion thereof; and (b) all lien claims if liquidated (including, without limitation, the liens shown on Schedules B and C of the Commitment, other than non-delinquent taxes for the year of Closing and subsequent years), and Seller covenants and agrees to pay off and discharge all such mortgage liens, deeds of trust and other such liens at Closing. If, within the time specified, Purchaser does not deliver an Objection Notice, all title and survey matters shall be deemed approved (other than its objections relating to the Dischargeable Liens). If, within the time specified, Seller does not have each such objectionable exception removed or corrected, Purchaser must, prior to the Inspection Period Expiration Date (as hereinafter defined), as its sole and exclusive remedy, either (i) terminate this Agreement, in which event this Agreement, without further action of the parties, shall become null and void and neither party shall have any further rights or obligations under this Agreement, except in accordance with Sections 5.3 and 6.4, or (ii) elect to accept title to the Property as it then exists, without reduction to the Purchase Price. If Purchaser fails to timely make either such election, Purchaser shall be deemed to have elected option (ii). Notwithstanding

-4-

anything to the contrary herein, the time period within which Purchaser must provide its Objection Notice and Seller may cure such objections must be completed prior to the Inspection Period Expiration Date. In other words, Purchaser shall have no right to terminate this Agreement under this Section 4.1(b) after the Inspection Period Expiration Date, notwithstanding anything to the contrary herein contained.

- (c) Permitted Exceptions. As used in this Agreement, the term "PERMITTED EXCEPTIONS" shall mean all matters either shown on the updated Survey or in the Title Commitment (other than the Dischargeable Liens), which Purchaser has accepted or has been deemed to accept under Section 4.1(b). Seller has no obligation to ensure that the Title Company will provide any endorsements to the Title Policy, including, without limitation, any deletion of the printed survey exception, all of which, if Purchaser elects to obtain any such endorsements, shall be Purchaser's responsibility and shall be at Purchaser's expense. Notwithstanding any provision hereof, Seller shall have until Closing to satisfy and/or remove all Schedule C items and shall be obligated to satisfy and/or remove same
- (d) Termination. In the event of termination of this Agreement pursuant to this Section 4.1, upon Purchaser's delivery of the Documents and the Purchaser's Information (as those terms are defined in Article V) to the Closing Agent, the Closing Agent shall deliver the Documents and the Purchaser's Information to Seller and shall deliver the Earnest Money to Purchaser, except for the Independent Consideration, which shall be paid to Seller, and thereafter neither party shall have any further rights or obligations hereunder, except for the

rights and obligations arising pursuant to Sections 5.3 and 6.4.

ARTICLE V.
INSPECTION

Section 5.1 Inspection Period.

Seller shall permit Purchaser and its authorized agents and representatives to enter upon the Real Property at all reasonable times during normal business hours to inspect and conduct reasonably necessary tests. After the Effective Date, Purchaser, at Purchaser's expense, shall also be entitled to have conducted on its behalf, subject to the operations of the restaurant, inspections of the Improvements and Personalty. Such entry and inspections may be conducted only during the period (the "INSPECTION PERIOD") commencing on the Effective Date and ending at 5:00 p.m., Los Angeles, California time on December 20, 2001 (the "INSPECTION PERIOD EXPIRATION DATE"); provided, however, that so long as this Agreement has not been terminated, Purchaser shall have the right, subject to the operations of the restaurant, to enter upon the Real Property at all reasonable times during normal business hours subsequent to the Inspection Period

-5-

Expiration Date and prior to the Closing for the purposes of continuing its inspection of the same so long as Purchaser complies with each of the provisions of this Agreement, including, without limitation, the provisions of this Article V relating to such entry and inspection. Notwithstanding the foregoing, in no event shall such entry and inspection subsequent to the Inspection Period Expiration Date serve to extend Purchaser's right to terminate this Agreement on or before the Inspection Period Expiration Date as provided in Section 5.4 hereof. Purchaser shall notify Seller, in writing, of its intention, or the intention of its agents or representatives, to enter the Real Property at least twenty-four (24) hours prior to such intended entry, and notify Seller of any tests to be conducted thereon. Purchaser shall bear the cost of all such inspections and tests. At Seller's option, Seller may be present for any inspection or test so long as Seller's presence (or desire to be present) does not delay or hinder any inspection or test.

Section 5.2 Document Review.

- (a) Documents. Seller has previously delivered to Purchaser, and Purchaser acknowledges its receipt of, the following (collectively, the "DOCUMENTS"):
 - (i) copies of any Plans;
 - (ii) copies of all existing soil, engineering, architectural, and environmental reports covering the Property in Seller's or Seller's agents or affiliates possession or control;
 - (iii) copies of all Service Contracts, if any;
 - (iv) a list of the Personalty to be conveyed, if any; and
 - (v) copies of all Permits in Seller's possession.
- (b) Proprietary Information. Purchaser acknowledges that any and all of the Documents are proprietary and confidential in nature and will be delivered to Purchaser solely to assist Purchaser in determining the feasibility of purchasing the Property. Purchaser agrees not to disclose the contents of the Documents to any party outside of Purchaser's organization except to certain of its attorneys, accountants, lenders, or investors (collectively, the "PERMITTED

OUTSIDE PARTIES") or if required by law to do so. Purchaser further agrees that the Documents shall be disclosed and exhibited only to those persons within Purchaser's organization or to those Permitted Outside Parties who are responsible for determining the feasibility of Purchaser's acquisition of the Property. In permitting the Permitted Outside Parties to review the Documents or other information to assist

-6-

Purchaser, Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third party benefits or relationships of any kind, either express or implied, have been offered, intended or created by Seller and any such claims are expressly rejected by Seller and waived by Purchaser and the Permitted Outside Parties, for whom, by its execution of this Agreement, Purchaser is acting as an agent with regard to such waiver.

- (c) Return of Documents. Purchaser shall return to Closing Agent all of the Documents, any and all copies Purchaser has made of the Documents, and all copies of any studies, reports, or test results obtained by Purchaser in connection with its inspection of the Property (collectively, the "PURCHASER'S INFORMATION") on the earlier to occur of (i) such time as Purchaser determines that it shall not acquire the Property, or (ii) such time as this Agreement is terminated for any reason. Closing Agent concurrently shall deliver the Documents and Purchase Information to Seller, and the Earnest Money to Purchaser.
- (d) No Representation or Warranty by Seller. Except as contained in this Agreement, Purchaser hereby acknowledges that Seller has not made and does not make any warranty or representation regarding the truth, accuracy, or completeness of the Items delivered under Sections 5.2(a)(i), (ii) (the "THIRD PARTY DOCUMENTS") or the source(s) thereof, and that Seller has not undertaken any independent investigation as to the truth, accuracy, or completeness of the Third Party Documents and is providing the Third Party Documents solely as an accommodation to Purchaser. Seller expressly disclaims and Purchaser waives any and all liability for representations or warranties, express or implied, statements of fact, and other matters contained in the Third Party Documents, or for any omissions from the Third Party Documents, or in any other written or oral communications transmitted or made available to Purchaser.

Section 5.3 Inspection Obligations.

- (a) Purchaser's Responsibilities. In conducting any inspections, investigations, examinations, or tests of the Property, Purchaser and its agents and representatives shall: (i) not materially interfere with the operation and maintenance of the Property; (ii) not materially damage any part of the Property or any personal property; (iii) not materially injure or otherwise cause bodily harm to Seller or its agents, guests, invitees, contractors and employees; (iv) maintain commercial general liability (occurrence basis) insurance in terms and amounts reasonably satisfactory to Seller covering any accident arising in connection with the presence of Purchaser, its agents, and its representatives on the Property, and shall deliver a certificate of insurance verifying such coverage (and naming

Seller as an additional insured) to Seller prior to entry upon the Property; (v) promptly pay prior to delinquency the costs of all tests, investigations, and examinations done with regard to the Property; (vi) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (vii) fully restore the Land and the Improvements to substantially the same condition in which they were found before any such inspection or tests were undertaken; (viii) not reveal or disclose any information obtained during the Inspection Period concerning the Property and the Documents to anyone outside Purchaser's organization, except in accordance with the confidentiality standards set forth in Section 5.2(b) hereof, and (ix) deliver to Seller a copy of all Purchaser's Information as required under Section 5.2(c).

- (b) PURCHASER'S AGREEMENT TO INDEMNIFY. PURCHASER SHALL INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL LIENS, CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, AND EXPENSES (INCLUDING REASONABLE LEGAL FEES AND EXPENSES) CAUSED BY PURCHASER'S INSPECTIONS OR TESTS OR ANY VIOLATION OF THE PROVISIONS OF THIS SECTION 5.3 EXCEPT AS MAY BE CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER, ITS EMPLOYEES, AGENTS OR INVITEES. THIS INDEMNITY SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT FOR ONE YEAR. NOTWITHSTANDING THE PRIOR SENTENCE, BUYER WILL HAVE NO OBLIGATION TO INDEMNIFY SELLER NOR BE LIABLE FOR ANY COST, DAMAGE LOSS OR EXPENSE OF SELLER RESULTING FROM OR RELATING TO (A) A PRE-EXISTING CONDITION AT THE PROPERTY OR (B) THE EXISTENCE OR CONSEQUENCES OF INFORMATION OBTAINED BY BUYER AS A RESULT OF ITS INVESTIGATION.

Section 5.4 Right of Termination.

If, during the Inspection Period, Purchaser shall, for any reason, in Purchaser's sole discretion, judgment, and opinion, be dissatisfied with any aspect of the Property, any item examined by Purchaser pursuant to this Agreement or the credit of the Tenant, Purchaser shall be entitled to terminate this Agreement by giving written notice to Seller on or before the Inspection Period Expiration Date (but no later than 5:00 p.m., Los Angeles, California time on the Inspection Period Expiration Date), whereupon all of the provisions of this Agreement (except Sections 5.3 and 6.4) shall terminate. Upon such termination, neither Seller nor Purchaser shall have any further obligation or liability to the other hereunder, except as provided in Sections 5.3 and 6.4 hereof, and upon Purchaser's delivery to Closing Agent of the Documents and Purchaser's Information, the Closing Agent shall return (i) Earnest Money to Purchaser, less

the Independent Consideration which shall be paid to Seller and (ii) the Documents and the Purchase's Information to Seller.

Section 5.5 Property Conveyed "AS IS".

- (a) DISCLAIMER OF REPRESENTATIONS AND WARRANTIES BY SELLER. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY OF THE CLOSING DOCUMENTS, SELLER HAS NOT MADE AND IS NOT NOW MAKING, AND SELLER SPECIFICALLY DISCLAIMS AND PURCHASER WAIVES, ANY WARRANTIES, REPRESENTATIONS, OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR

IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS OR GUARANTIES AS TO (I) MATTERS OF TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE SET FORTH IN THE DEED DESCRIBED IN SECTION 6.2(A) (IV) TO BE DELIVERED AT CLOSING); (II) ENVIRONMENTAL MATTERS RELATING TO THE PROPERTY OR ANY PORTION THEREOF; (III) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND EARTHQUAKE FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE EARTHQUAKES; (IV) WHETHER AND THE EXTENT TO WHICH, THE REAL PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (V) DRAINAGE; (VI) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORE; (VII) ZONING TO WHICH THE REAL PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT; (VIII) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS, AND ELECTRIC; (IX) USAGES OF ADJOINING PROPERTY; (X) ACCESS TO THE REAL PROPERTY OR ANY PORTION THEREOF; (XI) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE

-9-

PROPERTY OR ANY PORTION THEREOF, OR ANY INCOME, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS, OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF; (XII) THE PRESENCE OF HAZARDOUS SUBSTANCES IN (AS DEFINED IN SECTION 5.5(C)) IN ON, UNDER, OR IN THE VICINITY OF THE REAL PROPERTY; (XIII) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS, OR LAWS, BUILDING FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; (XIV) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS; (XV) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE REAL PROPERTY; (XVI) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE REAL PROPERTY; (XVII) THE EXISTENCE OF VESTED LAND USE, ZONING, OR BUILDING ENTITLEMENTS AFFECTING THE REAL PROPERTY; (XVIII) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (PURCHASER AFFIRMING THAT PURCHASER HAS NOT RELIED ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT SELLER MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE); OR (XIX) TAX CONSEQUENCES (INCLUDING, BUT NOT LIMITED TO, THE AMOUNT, USE, OR PROVISIONS RELATING TO ANY TAX CREDITS).

- (b) SALE "AS IS". EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY OF THE CLOSING DOCUMENTS, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF ITS AGENTS (EXCEPT TENANT) AND ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE. PURCHASER REPRESENTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED, AND SOPHISTICATED PURCHASER OF REAL ESTATE AND THAT IT IS RELYING ON (I) ITS OWN EXPERTISE AND THAT OF PURCHASER'S CONSULTANTS IN PURCHASING THE PROPERTY, (II) THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER

EXPRESSLY SET FORTH IN THIS AGREEMENT AND THIS CLOSING DOCUMENTS AND (III) THE REPRESENTATIONS AND WARRANTIES OF TENANT UNDER THE LEASE. PURCHASER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS PURCHASER DEEMS NECESSARY IN LIGHT OF TENANT'S REPRESENTATION UNDER THE LEASE. UPON CLOSING, AS BETWEEN PURCHASER AND

-10-

SELLER ONLY, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INSPECTIONS AND INVESTIGATIONS AND HEREBY WAIVES ANY CLAIM (EXCEPT CLAIMS ARISING FROM A BREACH OF THIS AGREEMENT) PURCHASER MAY HAVE AGAINST SELLER, NOW OR IN THE FUTURE, IN CONNECTION WITH ANY SUCH ADVERSE MATTERS, INCLUDING, WITHOUT LIMITATION, ANY RIGHT OF CONTRIBUTION. PURCHASER ACKNOWLEDGES AND AGREES THAT, IF ALL PURCHASER'S CONDITIONS PRECEDENT TO CLOSING HAVE BEEN SATISFIED OR WAIVED, UPON CLOSING, SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS," WITH ALL FAULTS. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER, OR ANY AGENT OF SELLER (EXCEPT TENANT). THE TERMS AND CONDITIONS OF THIS SECTION 5.5 SHALL EXPRESSLY SURVIVE THE CLOSING, NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT (EXCEPT TENANT), EMPLOYEE, SERVANT, OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN. PURCHASER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS THE "AS IS" NATURE OF THIS SALE AND ANY FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTERS THAT MAY BE ASSOCIATED WITH THE PROPERTY. PURCHASER HAS FULLY REVIEWED THE DISCLAIMERS, ASSUMPTIONS, AND WAIVERS SET FORTH IN THIS AGREEMENT WITH ITS COUNSEL AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS ARTICLE V AND IN PARTICULAR THIS SECTION 5.5 ARE AN INTEGRAL PART OF THIS AGREEMENT AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO PURCHASER FOR THE PURCHASE PRICE WITHOUT SUCH PROVISIONS. NOTHING CONTAINED IN THIS SECTION 5.5(b) OR ELSEWHERE IN THIS AGREEMENT SHALL REDUCE OR AFFECT IN ANY WAY WHATSOEVER: (I) THE TENANT'S OBLIGATIONS, DUTIES AND LIABILITIES ARISING UNDER THE LEASE, AND

-11-

(II) PURCHASER'S RIGHTS AND PRIVILEGES REGARDING ANY PERSON OTHER THAN SELLER.

- (c) Hazardous Substances Defined. For purposes hereof, "HAZARDOUS SUBSTANCES" means any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601 et seq.), as amended, or the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.), as amended, or any other federal, state, or local law, ordinance, rule, or regulation applicable to the Property, or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated

biphenyls (pcbs), radon gas, urea formaldehyde,
asbestos, lead or electromagnetic waves.

Section 5.6 Intentionally Omitted.

Section 5.7 Purchaser and Seller Represented by Counsel.

Purchaser and Seller hereby represents and warrants to the other that: (i) it is not in a significantly disparate bargaining position in relation to the other; (ii) it is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (iii) Purchaser is purchasing and Seller is selling the Property for business, commercial, investment, or other similar purpose. Purchaser represents and warrants to Seller that it is purchasing the Property not for use as Purchaser's residence.

ARTICLE VI.
CLOSING

Section 6.1 Closing Date.

The Closing shall be held in the offices of Closing Agent, or such other location as may be mutually agreed upon by Seller and Purchaser, at 10:00 a.m. (Dallas, Texas time) on December 21, 2001, or at such other time as mutually agreed by Seller and Purchaser. Notwithstanding the foregoing, Purchaser may elect for the Closing to occur any business day prior to December 21, 2001 by giving three days prior written notice of such earlier date to Seller and Closing Agent. The date on which the Closing occurs is the "Closing Date."

Section 6.2 Closing Matters.

(a) Seller's Deliveries. At Closing, Seller shall deliver:

-12-

- (i) possession of the Property, subject to the Permitted Exceptions;
- (ii) to the extent in Seller's or Seller's agent's possession or control, copies of all Permits;
- (iii) an executed and acknowledged special warranty deed (the "DEED") in substantially the form set forth in Exhibit B conveying the Real Property subject to the Permitted Exceptions;
- (iv) a bill of sale in substantially the form of Exhibit C (the "BILL OF SALE"), executed and acknowledged by Seller, conveying without warranty the Personalty;
- (v) an executed Assignment and Assumption of Warranties in substantially the form of Exhibit E (the "ASSIGNMENT OF WARRANTIES");
- (vi) a certificate of Seller respecting the non-foreign status of Seller in the form set forth in Exhibit D attached hereto;
- (vii) the originals of the Warranties, Service Contracts, Plans and Permits in Seller's or Seller's Agent's possession or control;
- (viii) an executed Lease between Purchaser and Dave & Buster I, L.P. ("TENANT") in substantially the form attached hereto as Exhibit F (the

"LEASE"); and

- (ix) an executed guaranty of the Lease by Dave & Buster's, Inc. ("GUARANTOR") in favor of Purchaser as Landlord under the Lease, in the form attached to the Lease as Exhibit D.
- (x) such other documents as may be reasonably required by Closing Agent, including, but not limited to, documents evidencing the authority of Seller to consummate the sale of the Property in accordance with this Agreement and designating those persons authorized to execute and deliver all necessary documents at Closing.

(b) Purchaser's Deliveries. At Closing, Purchaser shall deliver:

- (i) the remaining funds for the Purchase Price to the Closing Agent, sent by wire transfer of immediately available federal funds to the account designated by Closing Agent;

-13-

- (ii) the Note, duly executed by Purchaser;
- (iii) the Assignment of Warranties, duly executed and acknowledged by Purchaser;
- (iv) the Lease, duly executed and acknowledged by Purchaser; and
- (v) such other documents as may be reasonably required by Seller or Closing Agent, including, but not limited to, documents evidencing the authority of Purchaser to consummate the purchase of the Property in accordance with this Agreement and designating those persons authorized to execute and deliver all necessary documents at Closing.

(c) Intentionally Omitted.

(d) Preparation of Documents. All of the documents that are not attached hereto as exhibits to be executed at Closing shall be in form prepared to the reasonable satisfaction of Seller and Purchaser.

Section 6.3 Closing Costs.

Except as otherwise provided in Section 7.3, each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction that is the subject of this Agreement. Any escrow fee charged by the Title Company shall be paid equally by Purchaser and Seller. Any transfer or documentary stamp tax, or similar charge (the "TRANSFER TAXES"), shall be paid by Seller at Closing. Purchaser shall pay all premiums associated with extended coverage or any endorsements or modifications to the Title Policy, the costs of any updated Survey, and costs of any inspections or tests Purchaser authorizes or conducts.

Section 6.4 Real Estate Commission.

Seller agrees to pay, at Closing, to LMT Investment Company and Staubach Retail Services, Inc. (collectively, the "BROKERS"), a real estate commission in accordance with separate written contracts, but only in the event of a Closing in strict accordance with this Agreement. The payment of the aforementioned commission to the Brokers by Seller shall fully

satisfy any obligations of Seller for the payment of any real estate commission hereunder or in connection herewith. Seller and Purchaser each represent and warrant to the other that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby (other than as described above in this Section 6.4), and each agrees to and does hereby indemnify and hold the other harmless

-14-

against the payment of any commission to any person or entity (other than as described above in this Section 6.4) claiming by, through or under Seller or Purchaser, as applicable. This indemnification shall extend to any and all claims, liabilities, costs, and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive the Closing.

Section 6.5

Conditions Precedent to Seller's Obligations. Seller's obligation to consummate Closing hereunder is expressly conditioned on the satisfaction, at or before the Closing Date or such earlier date as is specified below, of each of the following conditions (any one or more of which may be waived, in whole or in part by Seller, at Seller's option):

- (a) All of the representations and warranties of Purchaser contained in this Contract shall have been true and correct when made and shall be true and correct on the Closing Date with the same effect as if made on and as of such date.
- (b) Purchaser shall have performed, observed and complied with all covenants, agreements and conditions required by this Contract to be performed, observed and complied with on its part prior to or as of the Closing.

Section 6.6

Conditions Precedent to Purchaser's Obligations. Purchaser's obligations hereunder (including, without limitation, its obligation to purchase and accept the Property) are expressly conditioned on the satisfaction, at or before the Closing Date or such earlier date as is specified below, of each of the following conditions (any one or more of which may be waived, in whole or in part, by Purchaser at Purchaser's option):

- (a) All of the representations and warranties of Seller contained in this Contract shall have been true and correct when made and shall be true and correct on the Closing Date with the same effect as if made on and as of such date (in both cases, without regard to any "knowledge" qualifications).
- (b) Seller shall have performed, observed and complied with all covenants, agreements and conditions required by this Contract to be performed, observed and complied with on its part prior to or as of the Closing hereof.
- (c) The physical condition of the Property shall be substantially the same on the Closing Date as on the Effective Date.
- (d) Purchaser shall have obtained a satisfactory Title Policy in accordance with Section 4.1(a).

-15-

- (e) The Lease and the Guaranty are both in full force and effect.
- (f) As of Closing, no proceedings shall be pending or threatened which could or would (i) involve the change, redesignation, redefinition or other

modification of the zoning classification of (or any zoning, building or environmental code requirements applicable to) the Property, or any portion thereof, or (ii) otherwise materially adversely affect the Property.

ARTICLE VII.
REMEDIES

Section 7.1 Seller's Remedies.

Other than the matters provided in Sections 5.3 and 6.4 hereof, in the event Purchaser materially breaches this Agreement, Seller, as its sole and exclusive remedy at law in equity or otherwise, shall be entitled to terminate this Agreement and recover the Earnest Money as liquidated damages and not as penalty, in full and complete satisfaction of any and all claims against Purchaser arising in any manner whatsoever from this Agreement or the transaction contemplated in this Agreement. Seller and Purchaser agree that the Seller's damages resulting from Purchaser's default are difficult, if not impossible, to determine and the Earnest Money is a fair and reasonable estimate of those damages which has been agreed to in an effort to cause the amount of said damages to be certain.

Section 7.2 Purchaser's Remedies.

Other than matters provided in Sections 6.4 or 8.4, in the event Seller materially breaches this Agreement, Purchaser may elect, as its sole remedies, to (a) terminate this Agreement by giving Seller timely written notice of such election prior to or at Closing or (b) enforce specific performance of the obligations of Seller. In the event of a material breach of representation or warranty by Seller discovered by Purchaser after Closing, Purchaser's remedies are those described in Section 8.4.

Section 7.3 Attorneys' Fees.

In the event either party hereto is required to employ an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such transaction.

-16-

Section 7.4 Disposition of Earnest Money.

In the event of a termination of this Agreement by either Seller or Purchaser, Closing Agent is authorized to deliver the Earnest Money to the party hereto entitled to same pursuant to the terms hereof on or before the fifth (5th) day following receipt by the Closing Agent and non-terminating party of written notice of such termination from the terminating party, unless the other party hereto notifies the Closing Agent that it disputes the right of the other party to receive the Earnest Money. In such event, the Closing Agent shall interplead the Earnest Money into a court of competent jurisdiction in Atlanta, Georgia. All attorneys' fees and costs and Closing Agent's costs and expenses incurred in connection with such interpleader shall be assessed against the party that is not awarded the Earnest Money or if the Earnest Money is distributed in part to both parties, then in proportion of such distribution. Notwithstanding the foregoing, in the event this Agreement is terminated and Purchaser is entitled to receive the Earnest Money, Closing Agent is not authorized to deliver the Earnest Money to

Purchaser unless and until Purchaser has delivered to Closing Agent the Documents and the Purchaser's Information.

ARTICLE VIII.
REPRESENTATIONS, WARRANTIES, AND COVENANTS

Section 8.1 Purchaser's Representations and Warranties.

- (a) Authority of Purchaser. Purchaser represents and warrants that Purchaser has full right, power, and authority to enter into this Agreement and, at Closing, will have full right, power and authority to consummate the sale provided for herein.
- (b) No Bankruptcy or Receivership. That at no time on or before the Closing Date, shall any of the following have occurred with respect to Purchaser, and if Purchaser is a partnership, to any general partners of Purchaser: (i) the commencement of a case under Title 11 of the United States Code, as now constituted or hereafter amended, or under any other applicable federal or state bankruptcy law or other similar law; (ii) the appointment of a trustee or receiver of any property interest; (iii) an assignment for the benefit of creditors; (iv) an attachment, execution or other judicial seizure of a substantial property interest; (v) the taking of, failure to take, or submission to any action indicating an inability to meet its financial obligations as they accrue; or (vi) a dissolution or liquidation, death or incapacity.

Section 8.2 Seller's Representations and Warranties.

- (a) Seller is the fee simple owner of the Real Property and has full power to own, occupy and transfer the Property.
- 17-
- (b) Seller is a Missouri corporation duly organized validly existing and in good standing, and Seller is qualified to do business in all states in which qualification is necessary to conduct its business, and has the power and authority to execute and deliver this Agreement and conclude the transactions contemplated therein.
 - (c) The execution nor the delivery of this Agreement and the other documents called for hereunder nor the consummation of the transactions contemplated hereby or thereby, or compliance with the terms hereof or thereof by Seller, will not (a) violate any laws or conflict with or result in a material breach of the terms of or constitute a default under the organizational documents of Seller or under any contract, judgment, or other restriction of any kind to which Seller is a party or by which Seller or the Property is bound, (b) require any approval, consent, authorization of, or other order or action of, or filing with, any court, governmental authority or regulatory body, or any other person or entity, (c) give any party with rights under any contract, judgment or other restriction to which Seller is a party, or by which Seller or the Property is bound, the right to terminate, modify or otherwise change the rights or obligations of Seller under such contract, judgment or other restriction, or (d) result in liens or rights of third parties regarding the Property. This Agreement and any other agreements and instruments required to be delivered under this Agreement by Seller, when executed and delivered by Seller and Purchaser, will constitute valid and binding obligations of Seller and will be enforceable

in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting creditor's rights generally or by general principles of equity.

- (d) There is no pending or, to the knowledge of Seller, threatened condemnation or similar proceeding or special assessment (inclusive of assessments for street widening, repair, or improvement), or change in zoning affecting the Property.
- (e) Seller has received no written notice concerning the Property from any Governmental Authority (as defined below in this Section 8.2) about a violation (or alleged violation, or of matters which with the passage of time or giving of notice, or both, would become violations) of any federal, state, county, or city statute, ordinance, code, rule, or regulation or stating that any investigation has commenced or is contemplated regarding any violation.
- (f) There is no pending or, to Seller's knowledge, threatened material litigation or administrative proceeding affecting the Property.

-18-

- (g) There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under other debtor relief laws contemplated by, pending, or threatened against Seller.
- (h) All necessary certificates of occupancy, licenses, permits, authorizations, consents, and approvals required by all governmental or quasi-governmental authorities having jurisdiction, and the requisite certificates of the local Board of Fire Underwriters (or other body exercising similar functions) have been issued for the Improvements, have been paid for in full, and are in full force and effect.
- (i) Seller has not received any notices from any insurance company or board of underwriters of any defects or inadequacies in the Property or any part thereof which would adversely affect the insurability of the Property or increase the premiums for the insurance on the Property.
- (j) The Improvements and Personalty at Closing will be owned by Seller free and clear of any conditional bills of sale, chattel mortgages, security agreements or financing statements or other liens or security interests of any kind.
- (k) To Seller's knowledge, no default or breach exists under any of the covenants, conditions, restrictions, rights-of-way or easements, if any, affecting all or any portion of the Property which are to be performed or complied with by the owner of the Property.
- (l) No work has been performed or is in progress at, and no materials have been furnished to, the Property which, though not presently the subject of, might give rise to, mechanics', materialmen's or other liens against the Property or any portion thereof. If any lien for such work is filed before or after Closing hereunder, Seller shall promptly discharge the same.
- (m) Seller has duly filed with the proper authorities all federal, state and local tax returns and reports relating to the Real Property required by law or

regulation to be filed. The Property has been rendered and valued for ad valorem and similar taxes and assessments as fully improved.

- (n) There are no adverse or other parties in possession of the Property, or any part thereof, except Seller, nor has any party been granted any license, lease, or other right relating to the use or possession of the Property, or any part thereof, except the Permitted Encumbrances.

-19-

- (o) To Seller's knowledge, there are no threatened or endangered species or their habitat on the Property.
- (p) Seller warrants that it has not received notice of any environmental hazards or conditions that affect the Property, and that it has not received notice that there are any Hazardous Substances on the Property.
- (q) Seller has not used the Property for the storage or disposal of Hazardous Substances and has not received notice that the Property was ever used for those purposes.
- (r) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.
- (s) No party has a right of first refusal or option or similar right to purchase all or any part of the Property.
- (t) The Documents are true, correct and complete copies of what each purports to be. The Documents are all the material documents, studies, reports, surveys, maps and other materials regarding the Property in Seller's or Seller's agents' possession or control.

The term "GOVERNMENTAL AUTHORITY" means the United States of America, the state, county, and city where the Property is located, and any other political subdivision in which the Property is located or which exercises jurisdiction over the Property, and any agency, department, commission, board, bureau, property owners association, utility district, flood control district, improvement district, or similar district, or other instrumentality of any of them.

Section 8.3

Seller's Covenants. Seller hereby covenants and agrees with Purchaser as follows:

- (a) At all time from the Effective Date until the Closing Date, Seller shall maintain (or cause to be maintained, in accordance with the terms of the Lease) in force, fire and extended coverage insurance upon the Real Property for not less than the full replacement value of the Real Property, and commercial general liability insurance with respect to injury or death to persons and damage to property in an amount not less than \$1,000,000; and
- (b) Prior to the Closing, Seller shall maintain the Improvements in their present condition and repair, except for normal wear and tear and any casualty or condemnation, and Seller shall not remove any fixtures,

-20-

equipment, furnishings and other personalty from the Improvements without replacing them with new items of like or greater value.

- (c) Seller shall not negotiate, execute or commit to enter into (i) any tenant lease; or (ii) any modification, amendment restatement or renewal of any of the leases, without Purchaser's prior written consent in each instance.
- (d) Seller shall not enter into any third party contract with respect to the Property which will survive the Closing.
- (e) Pending Closing, Seller shall operate and manage the Property in a normal businesslike manner, and shall perform when due, all of Seller's obligations under all third party contracts, insurance policies, governmental approvals and any other agreements relating to the Property and otherwise in accordance with applicable laws, ordinances, rules and regulations affecting the Property.
- (f) Seller has paid or will pay in full, prior to Closing, all bills and invoices for labor, goods, materials and services of any kind with respect to the Property and utility charges relating to the period prior to Closing.
- (g) All action required pursuant to this Contract which is necessary to effectuate the transactions contemplated herein will be taken promptly and in good faith by Seller, and Seller shall furnish Purchaser with such documents or further assurances as Purchaser may reasonably require.
- (h) After the date hereof and prior to Closing, no part of the Property, nor any interest therein, will be alienated, liened, encumbered or otherwise transferred.
- (i) Seller shall promptly notify Purchaser of any change in any condition with respect to the Property or of any event or circumstance which makes any representation or warranty of Seller to Purchaser under this Contract untrue or misleading in any material respect, it being understood that Seller's obligation to provide notice to Purchaser under this Section 8.3 shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties or covenants under this Contract.

Section 8.4 Survival of Representations and Warranties.

Except as otherwise expressly set forth herein, the representations and warranties set forth in Section 8.2 shall be continuing and shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time, and such representations and

-21-

warranties shall survive the Closing for a period of two years.

Section 8.5 Knowledge Standard.

For purposes of this Agreement, wherever the terms "SELLER'S KNOWLEDGE" or "TO THE BEST OF SELLER'S KNOWLEDGE" is used, it shall be limited to the actual knowledge (being the current, conscious awareness of facts or other information) of John Davis or Bryan Spain (collectively, "SELLER'S REPRESENTATIVES"). Seller represents and warrants to Purchaser that Seller's Representatives have made a reasonable inquiry of other employees and agents of Seller and are the most

knowledgeable persons regarding the Property and Seller's operation thereof. The Seller's Representatives are acting for and on behalf and in their capacities as officers of Seller or one or more of Seller's affiliates and are in no manner expressly or impliedly making any of these representations in their individual capacity and Purchaser waives any right to sue or seek any judgment or claim against the Seller's Representatives. The term "TO SELLER'S KNOWLEDGE" or "TO THE BEST OF SELLER'S KNOWLEDGE" shall not include knowledge imputed to the Seller from any other person.

ARTICLE IX.
CONDEMNATION

Section 9.1 Condemnation.

If, prior to Closing, any governmental authority or other entity having condemnation authority shall institute an eminent domain proceeding or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute such proceedings) with regard to a Material Portion (as hereinafter defined) of the Real Property, and the same is not dismissed on or before ten (10) days prior to Closing, Purchaser shall be entitled to terminate this Agreement by giving written notice to Seller on or before the earlier to occur of (a) ten (10) days following notice by Seller to Purchaser of such condemnation, or (b) the Closing Date. In the event Purchaser does not terminate this Agreement pursuant to the preceding sentence, Purchaser shall be conclusively deemed to have elected to close the acquisition of the Property subject to such condemnation, without any reduction in Purchase Price, and waives any right to terminate this Agreement as a result thereof. For purposes of this Section 9.1, a "MATERIAL PORTION" shall mean that portion of the Real Property which, if taken or condemned, would reduce the value of the Property by not less than \$50,000.00. Notwithstanding anything to the contrary herein, if any eminent domain proceeding is instituted (or notice of which is given) solely for the taking of any subsurface rights for utility easements or for any right-of-way easement, and the surface may, after such taking, be used in substantially the same manner as though such rights had not been taken, Purchaser shall not be entitled to terminate this Agreement as to any part of the Real Property, but any award

-22-

resulting therefrom shall be the exclusive property of Purchaser upon Closing. In the event Purchaser elects to terminate this Agreement under this Section 9.1, the Earnest Money (less the Independent Consideration) shall be returned to Purchaser upon Closing Agent's receipt of the Documents and Purchaser's Information in accordance with Section 5.4, and neither party to this Agreement shall thereafter have any further rights or obligations hereunder except as otherwise provided in Sections 5.3 and 6.4 hereof. If Purchaser waives (or is deemed to have waived) the right to terminate this Agreement as a result of such a condemnation, despite such condemnation, Seller and Purchaser shall close this Agreement in accordance with the terms hereof with no reduction in the Purchase Price, and Seller shall assign to Purchaser at Closing all of Seller's right, title and interest in and to all proceeds resulting or to result from said condemnation and Seller will execute and deliver to Purchaser at Closing, or thereafter on demand, all proper instruments for the assignment to and collection by Purchaser of any such award.

ARTICLE X.
RISK OF LOSS

Section 10.1 Risk of Loss.

Until Closing, Seller alone shall bear the risk of loss should

there be damage to any of the Improvements by fire or other casualty (collectively, "CASUALTY"). If, prior to the Closing, any of the Improvements shall be damaged by a Casualty, Seller shall take all action necessary to preserve and protect the Improvements from further loss or damage, and Seller shall deliver to Purchaser within one (1) business day of such Casualty written notice ("CASUALTY LOSS Notice") of such Casualty.

Section 10.2 Loss.

If the cost of restoring the Improvements to their condition prior to the Casualty, in full compliance with all applicable building and zoning laws, ordinances and regulations, will exceed \$100,000 whether or not such damage is covered by insurance, Purchaser (but not Seller) may either (a) terminate this Contract by delivering written notice to Seller prior to the Closing or (b) waive its right of termination and proceed to close this transaction in accordance with the terms hereof without reduction to the Purchase Price and Seller shall deliver to Purchaser an amount equal to the deductible and assign to Purchaser all of its rights in the resulting casualty insurance proceeds and a pro rata share of the rental or business loss proceeds, if any, from the insurance coverage. In which the event (A) Purchaser may notify all appropriate insurance companies of its interest in the insurance proceeds, and (B) all casualty insurance proceeds payable as a result of the loss (subject to the limitation herein described) and Purchaser's pro rata share of any rental or business loss proceeds shall be assigned to Purchaser at Closing.

-23-

ARTICLE XI.
MISCELLANEOUS

Section 11.1 Entire Agreement.

This Agreement contains the entire agreement of the parties hereto. There are no other agreements, oral or written, and this Agreement can be amended only by written agreement signed by the parties hereto, and by reference, made a part hereof.

Section 11.2 Agreement Binding on Parties; Assignment.

This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto. Purchaser may assign its rights under this Agreement only upon the following conditions: (i) the assignee of Purchaser must be an affiliate (as that term is defined in the rules and regulations promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended) of Purchaser, (ii) all of the Earnest Money must have been delivered in accordance with Section 2.2, (iii) Purchaser shall remain primarily liable for the performance of Purchaser's obligations, and (iv) a copy of the fully executed written assignment and assumption agreement along with the taxpayer identification number of the proposed assignee, shall be delivered to Seller at least two (2) days prior to Closing. No transfer or assignment in violation of this Section 11.2 is valid or enforceable.

Section 11.3 Effective Date.

The Effective Date of this Agreement shall be the date on which the Closing Agent acknowledges its receipt of a copy of

this Agreement executed by both Seller and Purchaser and receipt of the Earnest Money. The execution hereof by Seller shall constitute an offer by Seller to Purchaser to sell the Property on the terms and conditions herein stated.

Section 11.4

Notice.

All notices, requests, approvals, consents, and other communications required or permitted under this Agreement ("NOTICES") must be in writing and are effective:

(a) on the business day sent if (i) sent by telecopier prior to 5:00 p.m. Los Angeles, California time, (ii) the sending telecopier generates a written confirmation of sending, and (iii) a confirming copy is sent on the same business day by one of the other methods specified below.

-24-

(b) on the next business day after delivery, on a business day, to a nationally recognized overnight courier service for prepaid overnight delivery.

(c) 3 days after being deposited in the United States mail, certified, return receipt requested, postage prepaid, or

(d) upon receipt if delivered by any method other than the methods specified above.

All Notices must be sent to the address for each party specified below or to any other address any party specifies by ten (10) days' prior notice to the other party.

Seller: D & B Realty Holding, Inc.
2481 Manana Drive
Dallas, Texas 75220
Attn: John Davis, Esq.
Fax: (214) 357-1536
Email: john_davis@daveandbusters.com

with a copy to: Kane, Russell, Coleman & Logan, P.C.
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Attn: Scott A. Dyche
Fax: (214) 777-4299
Email: sdyche@krcl.com

and to: Staubach Retail Services, Inc.
15601 Dallas Parkway
Suite 400
Addison, Texas 75001
Attn: Mike Holsomback
Fax: (972) 361-5909
Email: holsomback@staubach.com

Purchaser: c/o Elysee Management Group, Inc.
27520 Hawthorne Boulevard, Suite 235
Rolling Hills, California 90274
Attn: Wayne Kao
Facsimile: 310-275-8914

with a copy Irell & Manella LLP
1800 Avenue of the Stars
Los Angeles, California 90067
Attn: Mark Wiesenthal
Fax: (310) 203-7199

-25-

Email: mwiesenthal@irell.com

Closing Agent/
Title Company:

Hexter-Fair Title Company
8333 Douglas Avenue
Suite 130
Dallas, Texas 75225
Attn: Carol Erick
Fax: (214) 987-3351
Email: caerick@hexter-fair.com

Section 11.5 Time of the Essence.

Time is of the essence in all things pertaining to the performance of this Agreement.

Section 11.6 Place of Performance.

This Agreement is made and shall be performable in Atlanta, Georgia, and shall be construed in accordance with the laws of the State of Georgia, without regard to principles of conflicts of law.

Section 11.7 Currency.

All dollar amounts are expressed in United States currency.

Section 11.8 Section Headings.

The section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several sections hereof.

Section 11.9 Obligations.

To the extent necessary to carry out the terms and provisions hereof, and unless otherwise specifically provided elsewhere herein, the terms, conditions, obligations and rights set forth herein shall not be deemed terminated at the time of Closing, nor will they merge into the various documents executed and delivered at the time of Closing.

Section 11.10 Business Days.

In the event that any date or any period provided for in this Agreement shall end on a Saturday, Sunday, or legal holiday in the state defined in Section 11.6 hereof,

-26-

the applicable date or period shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

Section 11.11 No Recordation.

Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto and any such recordation of this Agreement or memorandum hereto by Purchaser without the prior written consent of Seller shall constitute a default hereunder by Purchaser, whereupon this Agreement shall, at the option of Seller, terminate and be of no further force and effect. Upon termination, all Earnest Money shall be immediately delivered to Seller, whereupon the parties shall have no further duties or obligations one to the other except as provided in Sections 5.3 and 6.4.

Section 11.12 Multiple Counterparts.

This Agreement may be executed in multiple counterparts, each of which is to be deemed an original for all purposes. This Agreement may be executed by facsimile signature.

Section 11.13 Severability.

If any provision of this Agreement or application to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

Section 11.14 Taxpayer ID.

Purchaser's Taxpayer ID Number is 93-1218516.

Section 11.15 Section 1031 Exchange.

Purchaser may elect, upon notice to Seller given prior to the Closing Date, to exchange the fee title in the Property for other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder (the "1031 EXCHANGE TRANSACTION"). In order to facilitate the 1031 Exchange Transaction, Purchaser may retain the services of a Qualified Intermediary within the meaning of Treas. Reg. 1.1031(k)-1(g)(4), which shall provide services to Purchaser in connection

-27-

with Purchaser's 1031 Exchange Transaction. Purchaser expressly reserves the right to assign its rights under this Agreement to a Qualified Intermediary on or before the Closing Date. However, this assignment in no way relieves Purchaser of any obligations or duties under this Agreement. By executing this Agreement, Seller agrees to cooperate with Purchaser and the Qualified Intermediary, at no additional cost to Seller, to effect the 1031 Exchange Transaction and to execute and deliver any and all documents which reasonably may be required to effect the 1031 Exchange Transaction.

Section 11.16 No Assumption of Seller's Liabilities.

Purchaser is acquiring only the Property from Seller and is not the successor of Seller. Purchaser does not assume or agree to pay, or indemnify Seller or any person or entity against any liability, obligation or expense of Seller or relating to the Property.

SELLER:

D & B REALTY HOLDING, INC.,
a Missouri corporation

DATE: December 17, 2001

By: /s/ David O. Corriveau

Name: David O. Corriveau

Title: President

-28-

PURCHASER:

LANDFAIR, LLC,
a California limited liability company

DATE: _____, 2001

By: /s/ Wayne Kao

Name: Wayne Kao

Title: President

-29-

JOINDER BY CLOSING AGENT

Hexter-Fair Title Company, referred to in this Agreement as the Closing Agent hereby acknowledges that it received this Agreement executed by Seller and Purchaser and the Earnest Money on the 17th day of December 2001 (the "EFFECTIVE DATE"), and accepts the obligations of the of the Closing Agent as set forth herein. The Closing Agent hereby agrees to hold and distribute the Earnest Money in accordance with the terms and provisions of this Agreement.

HEXTER-FAIR TITLE COMPANY

By: /s/ Polly L. Johnson

Name: Vice President - Polly L. Johnson

Title: _____

-30-

EXHIBIT A

LEGAL DESCRIPTION OF LAND

[TO BE ADDED]

-31-

EXHIBIT B

LIMITED WARRANTY DEED

STATE OF GEORGIA
COUNTY OF COBB

PREPARED BY AND RETURN TO:
MARK WIESENTHAL, ESQ.
IRELL & MANELLA LLP
1800 AVENUE OF THE STARS, SUITE 900
LOS ANGELES, CALIFORNIA 90067

LIMITED WARRANTY DEED

THIS DEED made this _____ day of _____, 199__, between _____, ("Grantor") of the State of _____ and _____ ("Grantee") of the State of _____, (the terms Grantor and Grantee to include their respective heirs, successors and assigns, where the context hereof requires or permits).

WITNESSETH THAT: Grantor, for and in consideration of the sum of ten and no/100ths Dollars (\$10.00) and other good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt, adequacy and sufficiency of which being hereby acknowledged by Grantor, has granted, bargained, sold and conveyed, and by these presents does hereby grant, bargain, sell and convey unto Grantee, the following described real property, to wit:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT _____ OF THE _____ DISTRICT, COBB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED ON THE ATTACHED EXHIBIT "A", WHICH BY REFERENCE IS INCORPORATED HEREIN IN ITS ENTIRETY.

TO HAVE AND TO HOLD the above described tract or parcel of land, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of Grantee, forever, in FEE SIMPLE.

AND, SUBJECT TO the title matters, if any, expressly set forth hereinabove, Grantor will warrant and forever defend the right and title to the above-described tract or parcel of land unto the Grantee against the claims of any and all persons claiming by, through or under Grantor.

-32-

IN WITNESS WHEREOF, Grantor has signed and sealed this Deed the day and year first above written.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

BY: _____ (SEAL)

UNOFFICIAL WITNESS

NOTARY PUBLIC

MY COMMISSION EXPIRES:

-33-

EXHIBIT "A"

LEGAL DESCRIPTION

-34-

EXHIBIT "B"

PERMITTED ENCUMBRANCES

-35-

EXHIBIT C

BILL OF SALE AND ASSIGNMENT

This BILL OF SALE AND ASSIGNMENT (this "AGREEMENT") is made and entered into effective as of the day of _____ 2001 (the "EFFECTIVE DATE"), by and between D & B REALTY HOLDING, INC., a Missouri corporation ("ASSIGNOR"), as assignor, for the benefit of LANDFAIR, LLC, a California limited liability company ("ASSIGNEE"), as assignee.

PRELIMINARY STATEMENTS

The following statements are a material part of this Agreement:

A. Concurrently herewith, Assignor is transferring and conveying to

Assignee, by Special Warranty Deed, all of Assignor's interest in and to the land described on EXHIBIT "A" (the "LAND") attached to this Agreement and incorporated in this Agreement by reference, together with all improvements thereon and other property more particularly described therein (collectively, the "PROPERTY").

B. Assignor desires to assign to Assignee all of Assignor's interest, if any, in and to all equipment, machinery, and personal property used on or in connection with the operation and/or maintenance of the Property; and all of Assignor's interest, if any, in and to other items of personal property, both tangible and intangible, affixed or attached to, or in connection with the use, enjoyment, occupancy and operation of the Property, except those owned by others, but including the property described below (all of the foregoing properties and assets being herein collectively called the "ASSIGNED PROPERTIES").

AGREEMENTS:

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged:

1. Assignment. Assignor does hereby ASSIGN, CONVEY, GIVE, GRANT, BARGAIN, SELL, CONFIRM AND DELIVER unto Assignee and its respective successors and assigns, all of Assignor's rights, title and interest, if any, in and to the Assigned Properties. TO HAVE AND TO HOLD all and singular the Assigned Properties unto Assignee, its successors and assigns, forever, and Assignor does hereby bind itself, its successors and assigns, to forever WARRANT AND DEFEND Assignee's title to the Assigned Properties and all rights and interests therein unto Assignee, its successors and assigns, against all every person and persons whomsoever lawfully claiming the same or any interest therein, by, through or under Assignor, but not otherwise.

-36-

2. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, Assignor has caused this Agreement to be executed effective as of the Effective Date.

Assignor:

D & B REALTY HOLDING, INC.,
a Missouri corporation

By: _____

Name: _____

Title: _____

-37-

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

-38-

EXHIBIT D

CERTIFICATION OF NON-FOREIGN STATUS

SECTION 1445 OF THE INTERNAL REVENUE CODE PROVIDES THAT A TRANSFEREE OF A UNITED STATES REAL PROPERTY INTEREST MUST WITHHOLD TAX IF THE TRANSFEROR IS A FOREIGN PERSON. TO INFORM THE TRANSFEREE, _____, THAT WITHHOLDING TAX IS NOT REQUIRED UPON THE DISPOSITION OF A UNITED STATES REAL PROPERTY INTEREST BY D & B REALTY HOLDING, INC.

("SELLER"), THE UNDERSIGNED HEREBY CERTIFIES THE FOLLOWING ON BEHALF OF SELLER:

1. Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations promulgated pursuant thereto);

2. Seller's United States Employer Identification Number is: _____; and

3. Seller's office address is: 2481 Manana Drive, Dallas, Texas 75220.

Seller understands that this Certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalties of perjury, I declare that I have examined this Certification and, to the best of my knowledge and belief, it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

EXECUTED this ____ day of _____ 2001, at Dallas, Texas.

SELLER:

D & B REALTY HOLDING, INC.,
a Missouri corporation

By: _____
Name: _____
Title: _____

-39-

STATE OF TEXAS Section
 Section
COUNTY OF DALLAS Section

This instrument was ACKNOWLEDGED before me, on the ____ day of _____ 2001, by _____, who declares that he is the _____ of Dave & Buster's, Inc., a Missouri corporation, on behalf of said corporation.

[S E A L]

Notary Public, State of Texas

My Commission Expires:

Printed Name of Notary Public

-40-

EXHIBIT E

ASSIGNMENT OF WARRANTIES

This Assignment of Warranties (this "ASSIGNMENT") is made as of _____, 2001, by D & B REALTY HOLDING, INC., a Missouri corporation ("GRANTOR"), and LANDFAIR, LLC, a California limited liability company ("GRANTEE").

ASSIGNMENT

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash and other good and valuable consideration to Grantor paid by Grantee, the receipt and sufficiency of which are acknowledged, Grantor and Grantee agree as follows:

1. Assignment. Grantor GRANTS, SELLS, and CONVEYS to Grantee all of Grantor's interest in the following described properties, rights, and estates (collectively, the "PROPERTY") that are located on, affixed to, or used in connection with the real property (the "REAL PROPERTY") described on Exhibit A attached to this Assignment:

- (a) all service contracts, vending agreements, assignable licenses, or assignable permits with respect to the Real Property listed on Exhibit B to this Assignment (the "CONTRACTS"), and the continuing rents, issues, and profits from the Contracts, if any;
- (b) all security deposits, utility deposits, and other deposits and security deposit accounts, if any, maintained with respect to the Real Property (the "DEPOSITS"); and
- (c) all warranties and guaranties which are applicable to or covering any part of the improvements, personalty, or equipment situated on the Property, if any.

TO HAVE AND TO HOLD the Property to Grantee, its successors and assigns, forever. Grantor binds itself, its successors and assigns, to WARRANT AND FOREVER DEFEND, all and singular the Property, subject to the warranties, covenants, and conditions in this Assignment, to Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the Property or any part thereof, by, through, and under Grantor, but not otherwise.

2. Assumption. Grantee assumes and agrees to perform all terms, covenants, and conditions of the Contracts, on the part of the Grantor, as the case may be, therein required to be performed regarding events occurring on or after the date of this Assignment. Grantee also assumes and agrees to hold and pay the Deposits to the persons entitled to them.

-41-

3. Indemnities. Grantor shall indemnify, defend, and hold Grantee harmless from any and all liabilities, claims, demands, damages, and causes of actions that may now or hereafter be made or asserted against Grantee arising out of or related to the Property for acts or omissions of Grantor occurring prior to the date of this Assignment.

Grantee shall indemnify, defend, and hold Grantor harmless from any and all liabilities, claims, demands, damages, and causes of actions that may now or hereafter be made or asserted against Grantor arising out of or related to the Property for acts or omissions occurring on or after the date of this Assignment.

4. Disclaimer GRANTOR HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, EXPRESS OR IMPLIED,

OF, AS, TO AND CONCERNING THE FITNESS, SUITABILITY, MERCHANTABILITY OR CONDITION OF ANY OF THE PROPERTY AND ITS IMPROVEMENTS AND FIXTURES. THE TRANSFER OF THE PROPERTY TOGETHER WITH THE IMPROVEMENTS AND FIXTURES IS IN THEIR "AS IS," "WHERE IS" CONDITION, WITH ALL FAULTS.

DATED EFFECTIVE as of the first date above written.

GRANTOR:

D & B REALTY HOLDING, INC.,
a Missouri corporation

By:

Name:

Title:

GRANTEE:

LANDFAIR, LLC,
a California limited liability company

By:

Name:

Title:

-42-

EXHIBIT F

LEASE

[TO BE ATTACHED]

-43-

EXHIBIT G

PROMISSORY NOTE

\$2,517,000.00

Dallas, Texas

FOR VALUE RECEIVED, the undersigned, LANDFAIR, LLC, a California limited liability company (the "Borrower"), promises to pay to the order of D & B REALTY HOLDING, INC., a Missouri corporation ("Lender"), at 2481 Manana Drive, Dallas, Texas 75220, or at such other place as holder hereof may designate in lawful money of the United States of America in immediately available funds the principal sum of TWO MILLION FIVE HUNDRED SEVENTEEN THOUSAND and NO/100 DOLLARS (\$2,517,000.00) or so much as advanced hereunder from time to time, together with interest thereon from day to day outstanding from the date of advance at the rate of seven percent (7.0%) per annum, payable as follows:

Payments of principal and interest, in the amount of \$19,514.27 each, shall be due and payable monthly, commencing on February 1, 2002, and continuing regularly on the first (1st) day of each calendar month thereafter until December 31, 2021 at which time all outstanding principal and accrued, unpaid interest shall be due and payable.

Upon the failure of Borrower to repay the amounts due under this Promissory Note (this "Note"), when due, the holder hereof shall have the right to declare the unpaid principal balance and accrued but unpaid interest on this

Note at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof, if any, and to exercise any of its other rights, powers and remedies, at law or in equity. All such rights, powers, and remedies are cumulative of each other and of any and all other rights and remedies existing at law or in equity. Notwithstanding anything to the contrary herein contained, Lender or any other holder hereof shall not exercise any rights herein granted until such time as Lender or any other holder hereof has given Borrower written notice of default, and has given Borrower the opportunity to cure such default within ten (10) business days from the date of actual delivery of the notice to Borrower.

Should the indebtedness represented by this Note or any part hereof be collected at law or in equity or in bankruptcy, receivership or other court proceeding, or should this Note be placed in the hands of attorneys for collection after default, Borrower agrees to pay, in addition to the principal, interest due and payable hereon and any other sums due and payable hereunder, all costs of collecting or attempting to collect this Note, including reasonable attorneys' fees and expenses (including those incurred in connection with any appeal).

Borrower and all endorsers and guarantors of this Note hereby waive presentment, demand, notice, protest, stay of execution, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration, all other notices, filing of suit and diligence in collecting this Note or enforcing any of the security here for, and all other defenses to payment generally; and hereby assent to the terms hereof, and

-44-

agree that any renewal, extension, or postponement of the time for payment or any other indulgence or any substitution, exchange, or release of collateral or the additional release of any person or entity primarily or secondarily liable, may be affected without notice to and without releasing Borrower, any endorser or any guarantor from any liability hereunder or under any related guaranty and that the holder hereof shall not be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to enforce its rights against them or any security herefor.

Borrower may prepay any sums due and owing hereunder at any time, without penalty. This Note may be assigned by Borrower, without the necessity of the consent of Lender or any other holder hereof.

It is the intent of Lender and Borrower to conform to and contract in strict compliance with applicable usury laws from time to time in effect. All agreements between Lender or any other holder hereof and Borrower are hereby limited by the provisions of this paragraph which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable or received under this Note, or otherwise, exceed the maximum non-usurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this paragraph and such document shall, ipso facto, be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If the holder hereof shall ever receive anything of value that is characterized as interest under applicable law and that would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount that would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the indebtedness evidenced hereby in the inverse order of its maturity and not to the payment of interest, or refunded to Borrower or the other payor thereof if and to the extent such amount that would have been excessive exceeds such unpaid principal. The right to accelerate maturity of this Note or any other indebtedness does not include the right to accelerate any interest that has not otherwise accrued on the date of such acceleration, and the holder hereof does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the holder

hereof shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this paragraph, the term "applicable law" shall mean the laws of the State of Texas or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future. This provision shall control any other provision of this Note or in any other documents relating to this Note.

DAVE & BUSTER'S I, L.P., a Texas limited partnership ("DBLP") and a wholly owned subsidiary of Lender, as tenant, and Borrower, as landlord, have entered into that certain Lease Agreement of even date herewith (the "Lease") covering certain real property and improvements located in Marietta, Georgia. Notwithstanding anything to the contrary contained herein, in the

-45-

event that the tenant under the Lease shall default under the Lease, and such default shall remain uncured for the period provided in the Lease so as to become an Event of Default (as defined in the Lease), then this Note shall be immediately deemed paid in full and canceled, and Borrower shall have no further obligations, of any kind, to Lender or any other holder under this Note. Any default by Borrower under this Note shall constitute a default by landlord under the Lease.

THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY TEXAS LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS NOTE OR UNDER ANY OTHER DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS NOTE (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR ANY COURSE OR CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS NOTE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

THE WRITTEN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES,

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Note as of the date and year first above written.

BORROWER:

LANDFAIR, LLC,
a California limited liability company

By: _____

Name: _____

-46-

Title:

=====

LEASE AGREEMENT

By and Between

LANDFAIR, LLC,

a California limited liability company

(As Landlord)

AND

DAVE & BUSTER'S I, L.P.,

a Texas limited partnership

(As Tenant)

December 17, 2001

Marietta, Georgia

TABLE OF CONTENTS

	Page
1. Demise of Premises.....	4
2. Certain Definitions.....	4
3. Title and Condition.....	8
4. Use of Leased Premises; Quiet Enjoyment.....	10
5. Term.....	11
6. Rent.....	12
7. Net Lease; Non-Terminability.....	13
8. Payment of Impositions; Compliance with Legal Requirements and Insurance Requirements.....	14
9. Liens; Recording and Title.....	15
10. Indemnification.....	15
11. Maintenance and Repairs.....	16
12. Alterations.....	18
13. Condemnation.....	18
14. Insurance.....	22
15. Restoration.....	26
16. Subordination to Financing.....	27
17. Assignment or Subleasing.....	29
18. Permitted Contests.....	30
19. Conditional Limitations; Default Provisions.....	31
20. Additional Rights of Landlord and Tenant.....	34

21. Notices.....	35
22. Estoppel Certificates.....	36
23. Surrender and Holding Over.....	37
24. No Merger of Title.....	37
25. Definition of Landlord.....	38
26. Environmental Covenants and Indemnity.....	38
27. Entry by Landlord.....	40
28. No Usury.....	40
29. Separability.....	41
30. Miscellaneous.....	41
31. Additional Rent.....	42
32. Note Default.....	42
33. Representations and Warranties.....	42

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "LEASE") made as of the 17th day of December 2001, by and between, LANDFAIR, LLC, a California limited liability company, having an office at c/o Elysee Management Group, Inc., 27520 Hawthorne Boulevard, Suite 235, Rolling Hills, California 90274 ("LANDLORD"), and DAVE & BUSTER'S I, L.P., a Texas limited partnership, having its principal office at 2481 Manana Drive, Dallas, Texas 75220 ("TENANT"). The obligations of Tenant under this Lease are guaranteed by Dave & Buster's, Inc., a Missouri corporation (the "GUARANTOR") pursuant to a Guaranty (the "GUARANTY") of even date herewith, in the form attached hereto as Exhibit D.

In consideration of the rents and provisions herein stipulated to be paid and performed, Landlord and Tenant, intending to be legally bound, hereby covenant and agree as follows:

1. Demise of Premises. Landlord hereby demises and leases to Tenant and Tenant hereby takes and leases from Landlord for the term and upon the provisions hereinafter specified the following described property (collectively, the "LEASED PREMISES"): (i) the lot or parcel of land described on Exhibit A attached hereto and made a part hereof, together with the easements, rights, and appurtenances thereunto belonging or appertaining ("LAND"); (ii) the buildings, structures, and other improvements now located or hereafter constructed on the Land (collectively, the "IMPROVEMENTS"); and (iii) the machinery and equipment which are attached to the Improvements in such a manner as to become fixtures under applicable law, together with all additions and accessions thereto, substitutions therefor and replacements thereof permitted by this Lease (collectively, the "EQUIPMENT"), excepting therefrom the Trade Fixtures (as hereinafter defined). Attached hereto as Exhibit E and Exhibit F, respectively, are schedules listing the Equipment and the Trade Fixtures, as the same exist on the date hereof.

2. Certain Definitions.

"ADDITIONAL RENT" shall mean Additional Rent as defined in Paragraph 31.

"ADJOINING PROPERTY" shall mean all sidewalks, curbs, gores, and vault spaces adjoining the Leased Premises.

"ALTERATION" or "ALTERATIONS" shall mean any or all changes, additions (whether or not adjacent to or abutting any then-existing buildings), expansions (whether or not adjacent to or abutting any then-existing buildings), improvements, reconstructions, removals, or replacements of any of the Improvements or Equipment, both interior or exterior, and ordinary and extraordinary.

"BASIC RENT" shall mean Basic Rent as defined in Paragraph 6.

"BASIC RENT PAYMENT DATES" shall mean the Basic Rent Payment Dates as defined in Paragraph 6.

"COMMENCEMENT DATE" shall mean the Commencement Date as defined in Paragraph 5.

"CONDEMNATION" shall mean a Taking and/or a Requisition.

"DEFAULT RATE" shall mean the Default Rate as defined in Paragraph 19(b) (iv).

"ENVIRONMENTAL LAWS" shall mean any present or future federal, state or local laws, ordinances, rules or regulations pertaining to Hazardous Substances, industrial hygiene or environmental conditions, including without limitation the following statutes and regulations, as amended from time to time: (i) the Federal Clean Air Act, 42 U.S.C. Section 7401 et seq.; (ii) the Federal Clean Water Act, 33 U.S.C. Section 1151 et seq.; (iii) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); (iv) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. ("CERCLA") and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 ("SARA"); (v) the Hazardous Materials Transportation Act, 49 U.S.C. Section 1802; (vi) the National Environment Policy Act, 42 U.S.C. Section 1857 et seq.; (vii) the Toxic Substance Control Act of 1976, 15 U.S.C. Section 2601 et seq.; (viii) the regulations of the Environmental Protection Agency, 33 CFR and 40 CFR; (ix) regulations of the Occupational Safety and Health Administration ("OSHA") relating to asbestos; and (x) similar statutes, rules and regulations of any State.

"ENVIRONMENTAL CLAIMS" shall mean, individually and collectively, any claims, actions, administrative proceedings, judgments, damages, punitive damages, penalties, fines, costs, liabilities, sums paid in settlement, interest, losses or expenses (including reasonable attorneys' fees and costs, whether incurred in enforcing this Lease, collecting any sums due hereunder, settlement negotiations, at trial or on appeal), consultant fees and expert fees, together with all other costs and expenses of any kind or nature, that arise directly or indirectly from or in connection with the existence or suspected existence of a Hazardous Condition, whether occurring or suspected to have occurred before, on or after the date of this Lease or caused by any person or entity. Without limiting the generality of the foregoing definition, Environmental Claims specifically include claims, whether by related or third parties, for personal injury or real or personal property damage, and capital, operating and maintenance costs incurred in connection with any Remedial Work.

"EQUIPMENT" shall mean the Equipment as defined in Paragraph 1.

"EVENT OF DEFAULT" shall mean an Event of Default as defined in Paragraph 19(a).

"GUARANTY" and "GUARANTOR" shall having the meanings given them in the preamble of this Lease.

"HAZARDOUS CONDITION" shall mean the presence, discharge, disposal, storage or release of any Hazardous Substance on or in the Improvements, air, soil, groundwater, surface

water or soil vapor on or about the Leased Premises, or that migrates, flows, percolates, diffuses or in any way moves onto or into the Leased Premises, or from the Leased Premises into adjacent or other property.

"HAZARDOUS SUBSTANCES" means any hazardous or toxic substances, materials or wastes, including without limitation any flammable explosives, radioactive materials, asbestos in any form, concentration or condition, kepone, polychlorinated biphenyls (PCB's), electrical transformers, batteries, paints, solvents, chemicals, petroleum products, or other materials, substances or wastes exhibiting radioactive, hazardous, ignitable, reactive, carcinogenic or toxic characteristics, or otherwise dangerous to human, plant, or animal health or well-being, and further including those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 972.101) or by the Environmental Protection Agency, as hazardous substances (40 CFR Part 302, and amendments thereto) or such substances, materials and wastes which are or become regulated under any Environmental Law, including without limitation any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) PCB's, (iv) designated as a "hazardous substance," "hazardous waste," "hazardous

materials," "toxic substances," "contaminants," or (v) other pollution under any applicable Environmental Laws.

"IMPOSITIONS" shall mean the Impositions as defined in Paragraph 8.

"IMPROVEMENTS" shall mean the Improvements as defined in Paragraph 1.

"INSURANCE REQUIREMENT" or "INSURANCE REQUIREMENTS" shall mean, as the case may be, any one or more of the terms of each insurance policy required to be carried by Tenant under this Lease and the requirements of the issuer of such policy, and whenever Tenant shall be engaged in making any Alteration or Alterations, repairs or construction work of any kind (collectively, "WORK"), the term "INSURANCE REQUIREMENT" or "INSURANCE REQUIREMENTS" shall include a requirement that Tenant obtain or cause its contractor to obtain completed value builder's risk insurance when the estimated cost of the Work in any one instance exceeds the sum of One Hundred Thousand Dollars (\$100,000.00) and that Tenant or its contractor shall obtain worker's compensation insurance or other adequate insurance coverage covering all persons employed in connection with the Work, whether by Tenant, its contractors or subcontractors.

"LAND" shall mean the Land as defined in Paragraph 1.

"LAW" shall mean any constitution, statute, or rule of law.

"LEASED PREMISES" shall mean the Leased Premises as defined in Paragraph 1.

"LEGAL REQUIREMENT" or "LEGAL REQUIREMENTS" shall mean, as the case may be, any one or more of all present and future Laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements (including, but not limited to, Environmental Laws), even if unforeseen or extraordinary, of every duly constituted governmental authority or agency (but excluding only those which by their terms are not applicable to and do not impose

any obligation on Tenant, Landlord, any occupant of the Lease Premises or all or any part of the Leased Premises) and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Tenant, Landlord (with respect to the Leased Premises) any occupant of the Lease Premises or to all or any part of or interest in the Leased Premises, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Leased Premises, even if compliance therewith (i) necessitates structural changes or improvements (including changes required to comply with the "Americans with Disabilities Act of 1990") or results in interference with or precludes the use, occupancy or enjoyment of the Leased Premises or (ii) requires Tenant to carry insurance other than as required by the provisions of this Lease.

"LENDER" shall mean an entity identified as such in writing to Tenant that makes a Loan to Landlord, secured by a Mortgage and evidenced by a Note or which is the holder of the Mortgage and Note as a result of an assignment thereof.

"LOAN" shall mean a loan made by a Lender to Landlord secured by a Mortgage and evidenced by a Note.

"MORTGAGE" shall mean a mortgage, deed of trust or similar security instrument hereafter executed covering the Leased Premises from Landlord to a Lender.

"NET AWARD" shall mean the entire award payable to Landlord by reason of a Condemnation, less any reasonable expenses incurred by Landlord in collecting such award.

"NET PROCEEDS" shall mean the entire proceeds of any insurance required under clauses (i), (iv), (v) or (vi) of Paragraph 14(a), less any actual and reasonable expenses incurred by Landlord in collecting such proceeds.

"NOTE" or "NOTES" shall mean a Promissory Note or Notes hereafter executed from Landlord to a Lender, which Note or Notes will be secured by a Mortgage or Mortgages and, in some case, an assignment(s) of leases and rents.

"PERMITTED ENCUMBRANCES" shall mean those covenants, restrictions, reservations, liens, conditions, encroachments, easements, and other matters of

title that affect the Leased Premises as of the date of Landlord's acquisition thereof and thereafter, excepting, however, any such matters arising solely from the acts of Landlord (such as liens arising as a result of judgments against Landlord) as to which Tenant has not consented (such consent not to unreasonably be withheld).

"REMEDIAL ACTION" means any investigation or monitoring of site conditions, any clean-up, containment, remediation, removal or restoration work required by this Lease or required or performed by any federal, state or local governmental agency or political subdivision or performed by any nongovernmental entity or person, or any fines, penalties, or cost

contributions paid or payable by any nongovernmental entity or person, due to the existence or suspected existence of a Hazardous Condition.

"REPLACED EQUIPMENT" or "REPLACEMENT EQUIPMENT" shall mean the Replaced Equipment and Replacement Equipment, respectively, as defined in Paragraph 11(d).

"REQUISITION" shall mean any temporary condemnation or confiscation of the use or occupancy of the Leased Premises (or any part thereof) by any governmental authority, civil or military, whether pursuant to an agreement with such governmental authority in settlement of or under threat of any such requisition or confiscation, or otherwise.

"RESTORATION" shall mean the Restoration as defined in Paragraph 13(c) (i).

"STATE" shall mean the State of Georgia.

"TAKING" shall mean any taking of the Leased Premises (or a part thereof) in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of any agreement with any condemner in settlement of or under threat of any such condemnation or other eminent domain proceedings or by any other means, or any de facto condemnation.

"TERM" shall mean the Term as defined in Paragraph 5.

"TERMINATION DATE" shall mean the Termination Date as defined in Paragraph 13(b) (i) (A).

"TRADE FIXTURES" shall mean all fixtures, equipment and other items of personal property (including such items as are attached to the Improvements and the removal of which can be accomplished without material damage to the Improvements) that are owned by Tenant and used in the operation of the business conducted on the Leased Premises.

3. Title and Condition.

a. The Leased Premises are demised and let subject to (i) the Permitted Encumbrances and such other matters as may be set forth in Schedule B, Part 1 of the owner's title insurance policy relating to the Leased Premises issued to Landlord in connection with its acquisition of the Leased Premises, (ii) all Legal Requirements and Insurance Requirements, including any existing violation of any thereof, (iii) the condition of the Leased Premises as of the commencement of the Term, (iv) the rights of parties in possession as of the date hereof, and (v) any state of facts which an accurate survey or physical inspection of the Leased Premises might show, all without representation or warranty, express or implied, by Landlord; it being understood and agreed, however, that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any thereof which for any reason may have expired. Tenant has

examined the title to the Leased Premises on and as of the Commencement Date and has found the same to be satisfactory for all purposes.

b. LANDLORD LEASES AND WILL LEASE AND TENANT TAKES AND WILL TAKE THE LEASED PREMISES "AS IS", AND TENANT ACKNOWLEDGES THAT LANDLORD (WHETHER ACTING AS LANDLORD HEREUNDER OR IN ANY OTHER CAPACITY) HAS NOT MADE AND WILL NOT MAKE, NOR SHALL LANDLORD BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE LEASED PREMISES, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO ITS FITNESS FOR ANY USE OR PURPOSE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, AS TO LANDLORD'S TITLE THERETO, OR AS TO VALUE, COMPLIANCE WITH LEGAL REQUIREMENTS, INSURANCE REQUIREMENTS

SPECIFICATIONS, LOCATION, USE, CONDITION, MERCHANTABILITY, QUALITY, DESCRIPTION, DURABILITY OR OPERATION, IT BEING AGREED THAT ALL RISKS INCIDENT TO ALL OF THESE MATTERS ARE TO BE BORNE BY TENANT. TENANT ACKNOWLEDGES THAT THE LEASED PREMISES ARE OF ITS SELECTION AND THAT THE LEASED PREMISES AND ALL COMPONENTS THEREOF HAVE BEEN DEVELOPED, DESIGNED, SPECIFIED AND CONSTRUCTED, AT TENANT'S REQUEST, TO TENANT'S SPECIFICATIONS BY A CONTRACTOR SELECTED OR APPROVED BY TENANT AND HAVE BEEN INSPECTED BY TENANT AND ARE SATISFACTORY TO IT IN ALL RESPECTS. IN THE EVENT OF ANY DEFECT OR DEFICIENCY IN ANY OF THE LEASED PREMISES OF ANY NATURE, WHETHER PATENT OR LATENT, LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO OR FOR ANY INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES (INCLUDING STRICT LIABILITY IN TORT). THE PROVISIONS OF THIS PARAGRAPH 3 (b) HAVE BEEN NEGOTIATED, AND THE FOREGOING PROVISIONS ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY REPRESENTATIONS OR WARRANTIES BY LANDLORD, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE LEASED PREMISES, ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE AS ADOPTED BY THE STATE OR ANY OTHER LAW OR REGULATION NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

c. Landlord hereby assigns, without recourse or warranty whatsoever, to Tenant, all warranties, guaranties, and indemnities, express or implied, and similar rights which Landlord may have, if any, against any architect, manufacturer, seller, engineer, contractor, subcontractor, supplier, or builder with respect to any of the Leased Premises, including, but not limited to, any rights and remedies existing under contract or pursuant to the Uniform Commercial Code as adopted by the State (collectively, the "GUARANTIES"). Such assignment shall remain in effect until the termination of this Lease. Landlord shall also retain the right to enforce any assigned Guaranties in the name of Tenant and at Tenant's expense upon the occurrence of an Event of Default. Landlord hereby agrees to execute and deliver at Tenant's expense such further documents (but not including powers of attorney), as Tenant may reasonably request in order that Tenant may have the full benefit of the assignment effected or intended to be effected by this Paragraph 3(c). Upon the termination of this Lease, the

Guaranties shall automatically revert to Landlord. The foregoing provision of reversion shall be self-operative and no further instrument of reassignment shall be required. In confirmation of such reassignment Tenant shall execute and deliver promptly any certificate or other instrument that Landlord may reasonably request. Any monies collected by Tenant under any of the Guaranties after the occurrence of and during the continuation of an Event of Default shall be held in trust by Tenant and promptly paid over to Landlord. Tenant shall indemnify, defend (using counsel satisfactory to Landlord, or Landlord may elect to defend itself at Tenant's expense) and hold harmless Landlord from and against any claims, expenses (including reasonable attorney's fees), liabilities, costs, losses or damages arising out of or relating to Tenant's enforcement of any of the Guaranties.

d. Landlord agrees to enter into, at Tenant's sole cost and expense (including, but not limited to Landlord's reasonable legal fees), such easements, covenants, waivers, approvals or restrictions for utilities, parking or other matters as desirable for operation of the Leased Premises or properties adjacent thereto (collectively, "EASEMENTS") as reasonably requested by Tenant, subject to Lender's and Landlord's approval of the form thereof, not to be unreasonably withheld or delayed; provided, however, that no such Easement shall result in any material diminution in the value or utility of the Leased Premises and further provided that no such Easement shall render the use of the Leased Premises dependent upon any other property or condition the use of the Leased Premises upon the use of any other property, each of which Tenant shall certify to Landlord and Lender in writing delivered with Tenant's request with respect to such Easement. Tenant's request shall also include Tenant's written undertaking acknowledging that Tenant shall remain liable hereunder as principal and not merely as a surety or guarantor notwithstanding the establishment of any Easement.

e. Tenant agrees that Tenant is obligated to and shall perform all obligations of the owner of the Leased Premises under and pay all expenses which the owner of the Leased Premises may be required to pay in accordance with any reciprocal easement agreement or any other agreement or document of record now or (if consented to in writing by Tenant, which consent Tenant agrees shall not be unreasonably withheld, delayed or conditioned) in the future affecting the Leased Premises (herein referred to collectively as the "REA"), and that Tenant shall comply with all of the terms and conditions of any REA during the Term of this Lease. Tenant further covenants and agrees to indemnify, defend (using counsel satisfactory to Landlord, or Landlord may elect to defend itself at Tenant's expense), and hold harmless Landlord and Lender against any claim, loss, expense (including reasonable attorney's fees), liability or damage

suffered by Landlord or Lender arising out of or relating to Tenant's failure to perform any obligations or pay any expenses as and when required under any REA or comply with the terms and conditions of any REA as hereinabove provided during the Term of this Lease.

4. Use of Leased Premises; Quiet Enjoyment.

a. Tenant may use the Leased Premises as an entertainment-recreation-amusement-restaurant-bar complex similar to other Dave & Buster's facilities in the United States providing goods and services, which goods and services may primarily include, but not be

limited to, the provision, sale, rental, and use for pecuniary consideration, of virtual reality games, video games, so-called arcade games, rides and amusements, billiards, golf, play-for-fun blackjack, bowling, dance, nightclub and other amusements, food, beverages (alcoholic and non-alcoholic), party and catering facilities and play areas (some of which games, rides, etc. may provide for the opportunity to win prizes and/or other benefits, e.g., additional free games, by direct reward or through any other method, either directly or via a process of redemption) (any one or more of the foregoing uses is sometimes referred to herein as an "ENTERTAINMENT/FOOD USE"), or any lawful use that does not violate: (i) the terms of any REA, (ii) any Legal Requirements, or (iii) any Insurance Requirements. The parties hereby recognize that this type of complex is in a constantly evolving state, as is the entertainment-recreation-amusement industry and that, provided Tenant operates the Dave & Buster's herein in a consistent manner as it is then operating substantially all other Dave & Buster's facilities in the United States, changes consistent with such evolution may occur. In no event shall the Leased Premises be used for any purpose (including Entertainment/Food Use) that shall violate any Permitted Encumbrance, Legal Requirements, Insurance Requirements, or any covenants, restrictions, or agreements hereafter created by or consented to by Tenant applicable to the Leased Premises. Tenant agrees that with respect to the Permitted Encumbrances, Legal Requirements, Insurance Requirements, and any covenants, restrictions, or agreements hereafter created by or consented to by Tenant, Tenant, at its sole cost and expense, shall observe, perform and comply with and carry out the provisions thereof required therein to be observed and performed by Landlord.

b. Subject to Tenant's rights under Paragraph 18 hereof, Tenant shall not permit or suffer any unlawful occupation, business, trade or other activities to be conducted on or about the Leased Premises or any use to be made thereof contrary to applicable Legal Requirements or Insurance Requirements. Subject to Tenant's rights under Paragraph 18, Tenant shall not use, occupy, or permit or suffer any of the Leased Premises to be used or occupied, nor do or permit or suffer anything to be done in or on or about any of the Leased Premises, in a manner which would (i) make void or voidable any insurance which Tenant is required hereunder to maintain then in force with respect to any of the Leased Premises, (ii) affect the ability of Tenant to obtain any insurance which Tenant is required to furnish hereunder, (iii) cause any injury or damage to any of the Improvements unless pursuant to Alterations permitted under Paragraph 12 hereof, or (iv) constitute a public or private nuisance or waste. .

c. Subject to all of the provisions of this Lease, so long as no Event of Default exists hereunder, Landlord covenants to do no act to disturb the peaceful and quiet occupation and enjoyment of the Leased Premises by Tenant.

5. Term.

a. Subject to the provisions hereof Tenant shall have and hold the Leased Premises for an initial term commencing on December 17, 2001 (the "COMMENCEMENT DATE"), and ending December 31, 2021 (the "EXPIRATION DATE") (such initial term, together with any Renewal Term, as hereinafter defined, which comes into effect as hereinafter provided, is herein called the "TERM").

b. Provided this Lease shall not have been terminated pursuant to the provisions of Paragraphs 13(b) or 19, and provided further that no Event of Default or circumstance (other than a non-monetary default as to which Landlord has given notice to Tenant and other than a monetary default), which with the passage of time or the giving of notice or both would constitute an Event of Default exists when Tenant gives its Renewal Term Notice (as hereinafter defined) or on the date the applicable Renewal Term (as hereinafter defined) is to commence, Tenant shall have the option to renew this Lease for four (4) consecutive five (5) year periods (collectively, the "RENEWAL TERMS" and individually, a "RENEWAL TERM"). Tenant shall give the Landlord written notice ("RENEWAL TERM NOTICE") of its intent to renew this Lease at least twelve (12)

months and not more than eighteen (18) months prior to the Expiration Date or the expiration date of the applicable Renewal Term, as applicable. Each Renewal Term shall be subject to all of the provisions of this Lease, and all such provisions shall continue in full force and effect, except that the Basic Rent for each Renewal Term shall be the amounts determined in accordance with the schedule set forth in Exhibit B attached hereto and made a part hereof. If Tenant shall fail to timely give a Renewal Term Notice, then all options with regard to subsequent Renewal Terms shall expire and be null and void.

6. Rent.

a. Tenant shall pay to Landlord (or to Lender, if directed by Landlord), as minimum annual rent for the Leased Premises during the Term, the amounts set forth in Exhibit B attached hereto ("BASIC RENT"), commencing on the Commencement Date for the succeeding, prorated month, and continuing regularly on the first (1st) calendar day of each month thereafter during the Term, in advance (the said days being called the "BASIC RENT PAYMENT Dates"), and shall pay the same at Landlord's address set forth below, or at such other place as Landlord from time to time may designate to Tenant in writing, in funds which at the time of such payment shall be legal tender for the payment of public or private debts in the United States of America and if required by Landlord or Lender by wire transfer in immediately available federal funds to such account in such bank as Landlord or Lender shall designate, from time to time.

b. Tenant shall pay and discharge before the imposition of any fine, lien, interest or penalty may be added thereto for late payment thereof, as Additional Rent, all other amounts and obligations which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added by the party to whom such payment is due for nonpayment or late payment thereof. In the event of any failure by Tenant to pay or discharge any of the foregoing, Landlord shall have all rights, powers and remedies provided herein, by law or otherwise, in the event of nonpayment of Basic Rent.

c. If any installment of Basic Rent is not paid within five (5) days after written notice is given by Landlord or Lender (or Lender's servicer or other designee of Lender) to Tenant that the same is overdue, Tenant shall pay to Landlord or Lender, as the case may be, on demand, as Additional Rent, a late charge equal to five percent (5%) (the "LATE CHARGE") on such overdue installment of Basic Rent, but in no event more than the maximum amount allowed by law. The Late Charge shall be in addition to, and shall not limit, Landlord's other rights or remedies under this Lease, at law or in equity.

d. Landlord and Tenant agree that this Lease is a true lease and does not represent a financing arrangement. Each party shall reflect the transactions represented by this Lease in all applicable books, records, and reports (including, without limitation, income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

7. Net Lease; Non-Terminability.

a. This Lease is an absolutely net lease, and Tenant shall have an unconditional obligation to pay Basic Rent, Additional Rent, and all other sums payable hereunder by Tenant, without notice or demand, and without setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction, or defense.

b. Except as otherwise expressly provided in Section 13b or 14g hereof, this Lease shall not terminate, nor shall Tenant have any right to terminate this Lease, nor shall the obligations of Tenant under this Lease be affected for any reason whatsoever, including but not limited to the following: (i) any damage to or destruction of any of the Leased Premises by any cause whatsoever, (ii) any Condemnation, (iii) the prohibition, limitation, or restriction of or interference with Tenant's use of any of the Leased Premises, (iv) any eviction by paramount title or otherwise, (v) Tenant's acquisition of ownership of any of the Leased Premises other than pursuant to an express provision of this Lease, (vi) any default on the part of Landlord under this Lease or under any other agreement, (vii) any latent or other defect in, or any theft or loss of any of the Leased Premises, (viii) the breach of any warranty of any seller or manufacturer of any of the Equipment, (ix) any violation of Paragraph 4(c) by Landlord, or (x) any other cause whatsoever, whether similar or dissimilar to the foregoing, any present or future Legal Requirement the contrary notwithstanding. It is the intention of the parties hereto that the obligations of Tenant under this Lease shall be separate and independent

covenants and agreements, and that Basic Rent, Additional Rent, and all other sums payable by Tenant hereunder shall continue to be payable in all events (or, in lieu thereof, Tenant shall pay amounts equal thereto), and that the obligations of Tenant under this Lease shall continue unaffected, unless this Lease shall have been terminated pursuant to an express provision of this Lease.

c. Tenant agrees that it shall remain obligated under this Lease in accordance with its provisions and that, except as otherwise expressly provided in Section 13b or 14g hereof, it shall not take any action to terminate, rescind or avoid this Lease, notwithstanding (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Landlord, (ii) the exercise of any remedy, including foreclosure, under the Mortgage, or (iii) any action with respect to this Lease (including the disaffirmance hereof) which may be taken by Landlord under the Federal Bankruptcy Code or by any trustee, receiver or liquidator of Landlord or by any court under the Federal Bankruptcy Code or otherwise.

d. This Lease is the absolute and unconditional obligation of Tenant. To the extent permitted by applicable law, Tenant waives all rights which are not expressly stated in this Lease but which may now or hereafter otherwise be conferred by law (i) to quit, terminate or surrender this Lease or any of the Leased Premises, (ii) to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense of or to Basic Rent, Additional Rent or any other sums payable under this Lease, except as otherwise expressly provided in this Lease, and (iii) for any statutory lien or offset right against Landlord or its property.

8. Payment of Impositions; Compliance with Legal Requirements and Insurance Requirements.

a. i) Subject to the provisions of Paragraph 18 hereof relating to contests, Tenant shall, before delinquency thereof, pay and discharge the following whether the same became due and payable before, on or after the Commencement Date (collectively, the "IMPOSITIONS"): all taxes of every kind and nature (including real, ad valorem, personal property, sales, use, and gross rental or other gross receipts taxes), assessments, levies, fees, water and sewer rents and charges, utilities and communications taxes and charges and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time, prior to or during the Term, imposed upon or assessed against (A) the Leased Premises or any portion thereof or interest therein, (B) any Basic Rent, Additional Rent or other sum payable hereunder, (C) this Lease or the leasehold estate created hereby, or (D) the acquisition, occupancy, leasing, subleasing, licensing, use, possession or operation of the Leased Premises or any portion thereof or interest therein (including without limitation, any taxes on revenues, rents, income, awards, proceeds, capital gains, profits, excess profits, gross receipts, sales, use, excise and other taxes, duties or imports whether similar or not in nature, assessed, levied or imposed against Landlord, Tenant, any subtenant or any licensee, or the Leased Premises by any governmental authority). If received by Landlord, Landlord shall promptly deliver to Tenant any bill or invoice with respect to any Imposition.

ii) Nothing herein shall obligate Tenant to pay, and the term "IMPOSITIONS" shall exclude, federal, state or local (A) transfer taxes as the result of a conveyance by (or suffered by) Landlord to a party other than Tenant or an affiliate of Tenant, (B) franchise, capital stock or similar taxes if any, of Landlord, (C) net income, excess profits or other taxes, if any, of Landlord, determined on the basis of or measured by its net income, or (D) any estate, inheritance, succession, gift, capital levy or similar taxes, unless the taxes referred to in clauses (B) and (C) above are in lieu of or a substitute for any other tax or assessment upon or with respect to any of the Leased Premises which, if such other tax or assessment were in effect at the commencement of the Term, would be payable by Tenant under this Lease. In the event that any assessment against any of the Leased Premises may be paid in installments, Tenant shall have the option to pay such assessment in installments; and in such event, Tenant shall be liable only for those installments that become due and payable during the Term or are allocable to the Term. Tenant shall prepare and file all tax reports required by governmental authorities that relate to the Impositions. Tenant shall deliver to Landlord and to Lender, within twenty (20) days after Tenant's receipt thereof, copies of all settlements and notices pertaining to the

Impositions which may be issued by any governmental authority and receipts for payments of all Impositions made during the Term.

b. Subject to the provisions of Paragraph 18 hereof, Tenant shall, at its sole cost and expense, promptly comply and cause the Leased Premises to comply with and conform to all of the Legal Requirements and Insurance Requirements applicable to the ownership, occupancy or use of all or any part thereof, including those which require structural, unforeseen or extraordinary changes or additions to the Leased Premises.

9. Liens; Recording and Title.

a. Subject to the provisions of Paragraph 18 hereof, Tenant shall not, directly or indirectly, create or permit to be created or to remain, and shall promptly discharge, any lien, mortgage, encumbrance, claim or other charge on the Leased Premises, on the Basic Rent, Additional Rent or on any other sums payable by Tenant under this Lease, other than the Mortgage, and any mortgage, lien, monetary encumbrance or other charge created by or resulting solely from any act or omission by Landlord or those claiming by, through or under Landlord (except Tenant or those claiming by, through or under Tenant). Notice is hereby given that Landlord shall not be liable for any labor, services, or materials furnished or to be furnished to Tenant, or to anyone holding any of the Leased Premises through or under Tenant, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to any of the Leased Premises.

b. Each of Landlord and Tenant shall execute, acknowledge and deliver to the other a written Memorandum of this Lease to be recorded in the appropriate land records of the jurisdiction in which the Leased Premises is located, in order to give public notice and protect the validity of this Lease. In the event of any discrepancy between the provisions of said recorded Memorandum of this Lease and the provisions of this Lease, the provisions of this Lease shall prevail.

c. Nothing in this Lease or otherwise and no action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, or lien in or upon the estate of Landlord in any of the Leased Premises.

10. Indemnification.

a. TENANT AGREES TO DEFEND (USING COUNSEL SATISFACTORY TO LANDLORD, OR LANDLORD MAY ELECT TO DEFEND ITSELF AT TENANT'S EXPENSE), PAY, PROTECT, INDEMNIFY, SAVE AND HOLD HARMLESS LANDLORD AND LENDER, AND ANY PARTNER, SHAREHOLDER, MEMBER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE AND AGENT OF EACH (THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, DAMAGES, PENALTIES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS, OR

JUDGMENTS OF ANY NATURE WHATSOEVER, HOWSOEVER CAUSED (EXCEPT IF CAUSED SOLELY BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD), ARISING FROM OR RELATING TO THE LEASED PREMISES OR THE USE, NON-USE, OCCUPANCY, CONDITION, DESIGN, CONSTRUCTION, MAINTENANCE, REPAIR, OR REBUILDING OF THE LEASED PREMISES, INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM OR RELATING TO: (I) ANY INJURY TO OR DEATH OF ANY PERSON OR PERSONS OR ANY LOSS OF OR DAMAGE TO ANY PROPERTY, REAL OR PERSONAL, IN ANY MANNER ARISING THEREFROM CONNECTED THEREWITH OR OCCURRING THEREON, WHETHER OR NOT LANDLORD HAS OR SHOULD HAVE KNOWLEDGE OR NOTICE OF THE DEFECT OR CONDITIONS, IF ANY, CAUSING OR CONTRIBUTING TO SAID INJURY, DEATH, LOSS, DAMAGE OR OTHER CLAIM AND REGARDLESS OF THE NEGLIGENCE OF THE LANDLORD OR ANY OF ITS AGENTS, OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, MANAGERS, MEMBERS, CONTRACTORS OR EMPLOYEES; (II) ANY CONTEST REFERRED TO IN PARAGRAPH 18 HEREOF; (III) ANY ENVIRONMENTAL CLAIMS (AS HEREINAFTER DEFINED), AND (IV) ANY BREACH OF TENANT'S REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS LEASE. IN CASE ANY ACTION OR PROCEEDING IS BROUGHT AGAINST ONE OR MORE OF THE INDEMNIFIED PARTIES BY REASON OF ANY SUCH CLAIM AGAINST WHICH TENANT HAS AGREED TO DEFEND, PAY, PROTECT, INDEMNIFY, SAVE AND HOLD HARMLESS PURSUANT TO THE PRECEDING SENTENCE, TENANT COVENANTS UPON NOTICE FROM SUCH INDEMNIFIED PARTY(S) TO RESIST OR DEFEND SUCH INDEMNIFIED PARTY(S) IN SUCH ACTION, WITH THE EXPENSES OF SUCH DEFENSE PAID BY TENANT, AND SUCH INDEMNIFIED PARTY(S) WILL COOPERATE AND ASSIST IN THE DEFENSE OF SUCH ACTION OR PROCEEDING IF REASONABLY REQUESTED SO TO DO BY TENANT.

b. The obligations of Tenant under this Paragraph 10 and all other indemnification obligations of Tenant contained elsewhere in this Lease shall be cumulative and shall survive the expiration or any termination of this

Lease.

11. Maintenance and Repairs.

a. Except for any Alterations that Tenant is permitted to make pursuant to this Lease, Tenant shall at all times, including but not limited to any Requisition period, put, keep, and maintain the Leased Premises (including, without limitation, the roof, landscaping, walls, footings, foundations, and other structural components of the Leased Premises) and the Equipment in the same condition and order of repair as exists as of the date of this Lease, except for ordinary wear and tear, and shall promptly make all repairs and replacements of every kind and nature (including but not limited to those "capital" in nature or structural), whether foreseen or unforeseen, which may be required to be made upon or in connection with the Leased Premises in order to keep and maintain the Leased Premises in the order and condition required by this Paragraph 11a. Tenant shall do or cause others to do all shoring of the Leased Premises or of foundations and walls of the Improvements and every other act necessary or appropriate for preservation and safety thereof, by reason of or in connection with any excavation or other building operation upon any of the Leased Premises, whether or not Landlord shall, by reason of any Legal Requirements or Insurance Requirements, be required to take such action or be liable for failure to do so. Landlord shall not be required to make any repair or replacement, whether foreseen or unforeseen, or to maintain any of the Leased Premises or Adjoining Property in any way, and Tenant hereby expressly waives the right to make or perform maintenance repairs or replacements at the expense of the Landlord, which right may be provided for in any Legal Requirement now or hereafter in effect. Nothing in the preceding sentence shall be deemed to preclude Tenant from being entitled to insurance proceeds or condemnation awards for

Restoration pursuant to Paragraphs 13(c) and 14(g) of this Lease. Tenant shall, in all events, make or perform all maintenance repairs and replacements for which it is responsible hereunder promptly, and all such replacements repairs and maintenance shall be in a good, proper and workmanlike manner and of equal or better quality than the original.

b. In the event that any Improvement shall violate any Legal Requirements or Insurance Requirements and as a result of such violation enforcement action is threatened or commenced against Tenant or with respect to the Leased Premises, then Tenant at its sole cost and expense, at the request of Landlord, shall either (i) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such violation, whether or not the same shall affect Landlord, Tenant, the Leased Premises or all or any of them, or (ii) take such action as shall be necessary to remove such violation, including, if necessary, any Alteration. Any such repair or Alteration shall be made at Tenant's sole cost and expense in conformity with the provisions of Paragraph 12 of this Lease.

c. If Tenant shall be in default under any of the provisions of this Paragraph 11, Landlord may (but shall not be obligated) after fifteen (15) days written notice given to Tenant and failure of Tenant to commence to cure during said period, but without notice in the event of an emergency, do whatever is necessary to cure such default as may be appropriate under the circumstances for the account of and at the expense of Tenant. In the event of an emergency Landlord may notify Tenant of the situation by phone or other available communication. All reasonable sums so paid by Landlord and all reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment or incurring the expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

d. Tenant, at its sole cost and expense, shall from time to time replace with new equipment or parts which are the same quality or better than that which is being replaced (the "REPLACEMENT EQUIPMENT") any of the Equipment (the "REPLACED EQUIPMENT") which shall have become worn out or unusable for the purpose for which it is intended, been taken by a Condemnation as provided in Paragraph 13, or been lost, stolen, damaged or destroyed. Tenant promptly shall repair at its sole cost and expense all damage to the Leased Premises caused by the removal of Equipment or Replaced Equipment or other personal property of Tenant or the installation of Replacement Equipment. All Replacement Equipment shall become the property of Landlord, shall be free and clear of all liens, claims, encumbrances, charges and rights of others and shall become a part of the Equipment as if originally demised herein.

e. Notwithstanding the foregoing provisions of Section 11, Tenant

shall not be required to undertake replacement of the roof, exterior walls, footings, or foundations of the Leased Premises during the last ten (10) months of the Term or the Renewal Term(s), as the case may be, provided that Tenant shall be required to replace same if replacement is attributable in whole or in part to: (i) the negligence or willful acts or other fault of Tenant or anyone holding any or all of the Leased Premises through or under Tenant, or any of their respective agents, employees, contractors or invitees, or (ii) Tenant's breach of this Lease (including, but not

limited to, Tenant's deferral or other failure to perform maintenance, repairs and replacements as and when required by this Lease).

f. Landlord shall have no obligations whatsoever for repairs, replacements (including, but not limited to, those replacements, which but for Paragraph 11 e. hereof, Tenant would be required to make) or maintenance of the Leased Premises.

12. Alterations.

a. Tenant shall not make Alterations which would (after the completion thereof) impair the structural integrity of the Leased Premises or adversely affect the systems of the building(s) that are part of the Leased Premises, without Landlord's written consent, which consent Landlord agrees not unreasonably to withhold or delay. Tenant may make any other Alterations without the prior written consent of the Landlord provided such Alterations comply with all of the provisions of the following sentence.

b. In the event that Landlord gives its prior written consent to any Alterations, or if such consent is not required, Tenant agrees that in connection with any Alteration: (i) the fair market value of the Leased Premises shall not be lessened in any material respect after the completion of any such Alteration, or its structural integrity impaired or its systems adversely affected; (ii) the Alteration and any Alteration theretofore made or thereafter to be made shall not in the aggregate reduce the gross floor area of the Improvements; (iii) all such Alterations shall be performed in a good and workmanlike manner using new materials of a quality at least equal to the quality of the original Improvements, and shall be expeditiously completed in compliance with all Legal Requirements; (iv) all work done in connection with any such Alteration shall comply with all Insurance Requirements; (v) Tenant shall promptly pay all costs and expenses of any such Alteration, and shall (subject to the provisions of Paragraph 18 hereof) discharge all liens filed against any of the Leased Premises arising out of the same; (vi) Tenant shall procure and pay for all permits and licenses required in connection with any such Alteration; (vii) all such Alterations shall be the property of Landlord and shall be subject to this Lease; and (viii) any Alteration which involves the building systems, roof, foundations, footing or other or structural elements of the Improvements, or the estimated cost of which in any one instance exceeds Fifty Thousand Dollars (\$50,000.00), shall be made under the supervision of an experienced, licensed architect or engineer and in accordance with plans and specifications which shall be submitted to Landlord (for informational purposes only) prior to the commencement of the Alterations.

13. Condemnation.

a. Tenant, promptly after obtaining knowledge of the institution of any proceeding for Condemnation, shall notify Landlord thereof and Landlord shall be entitled to participate in any Condemnation proceeding. Landlord, promptly after obtaining knowledge of the institution of any proceeding for Condemnation, shall notify Tenant thereof and Tenant shall have the right to participate in such proceedings. Subject to the provisions of this Paragraph 13 and Paragraph 15, Tenant hereby irrevocably assigns to Lender or to Landlord, in that order, any

award or payment in respect of any Condemnation of all or any part of the Leased Premises, except that nothing in this Lease shall be deemed to assign to Landlord or Lender any award or payment on account of the Trade Fixtures, moving expenses and out-of-pocket expenses incidental to the move, if available, to the extent Tenant shall have a right to make a separate claim therefor against the condemner, it being agreed, however, that Tenant shall in no event be entitled to any payment that reduces the award to which Landlord is or would be entitled for the condemnation of all or any part of the Leased Premises. Notwithstanding the foregoing, Tenant shall be entitled to any award or payment on account of Tenant's leasehold interest under this Lease only in the event of a Condemnation described in Paragraph 13(b) (i) (A) and then only to the extent that when such award, added to all other awards to which Tenant is entitled hereunder, is

subtracted from the entire award in respect to all interests in the Leased Premises, the remainder exceeds the total of the amount set forth on Exhibit C attached hereto and made a part hereof plus the Additions to Purchase Price (as hereinafter defined).

b. (i) (A) If (I) the entire Leased Premises or (II) at least fifteen percent (15%) of the applicable Land or the building(s) constructed on the Land or any means of ingress, egress, or access to the Leased Premises, the loss of which even after Restoration would, in Tenant's reasonable business judgment based on the effect of the Condemnation only, and not on the efficacy of Tenant's business in the Leased Premises prior to the Condemnation or any other factor, be substantially and materially adverse to the business operations of Tenant at the Leased Premises, shall be subject of a Taking by a duly constituted authority or agency having jurisdiction, then Tenant may, not later than ninety (90) days after such Taking has occurred, serve notice ("TENANT'S TERMINATION NOTICE") upon Landlord of Tenant's intention to terminate this Lease on any Basic Rent Payment Date specified in such Tenant's Termination Notice, which date (the "TERMINATION DATE") shall be no sooner than the first Basic Rent Payment Date occurring at least one hundred eighty (180) days after the date of such Tenant's Termination Notice.

(B) In the event that during the Initial Term or the first Renewal Term, Tenant shall serve a Tenant's Termination Notice upon Landlord, Tenant shall, as part of such Tenant's Termination Notice offer (which offer may be accepted by Landlord only with Lender's consent as set forth below in Paragraph 13(b)(i)(E) if the Leased Premises are then subject to a Mortgage) to purchase the Leased Premises and the award (or if no part of the Leased Premises shall remain, the entire award) for the applicable price (the "PURCHASE PRICE") computed in accordance with the schedule annexed hereto and marked Exhibit C plus all other amounts which may have accrued and be owing to Lender or Landlord under this Lease (such amounts being hereinafter collectively referred to as the "ADDITIONS TO PURCHASE PRICE").

(C) If Landlord and Lender shall elect to reject Tenant's offer to purchase, Landlord shall give notice thereof to Tenant within thirty (30) days after the giving of Tenant's Termination Notice. Should said notices of Landlord and Lender rejecting Tenant's offer to purchase not be served within said period of sixty (60) days, then and in that event, the said offer shall be deemed rejected.

(D) Should an offer to purchase be rejected by Landlord and Lender, this Lease shall be terminated as above provided and the entire award made in the Condemnation proceeding with respect to the Leased Premises shall be paid to Lender or to Landlord in that order.

(E) Landlord's notice to accept Tenant's offer to purchase shall be void and of no effect unless accompanied by the written notice of Lender (if the Leased Premises are then subject to a Mortgage) to the effect that Lender also elects to accept Tenant's offer to purchase.

(ii) In the event that Landlord and Lender shall accept Tenant's offer to purchase, title shall close and the Purchase Price and Additions to Purchase Price shall be paid as hereinafter provided and in such event Tenant shall be entitled to and shall receive any and all awards with respect to the Leased Premises then or thereafter made in the Condemnation proceeding and Landlord shall assign (or in case of any award previously made, deliver to Tenant on the Closing Date) such award as may be made with respect to the Leased Premises. In the event Landlord and Lender shall accept Tenant's offer to purchase with respect to the Leased Premises, title shall close thirty (30) days after the Termination Date hereinbefore defined (the "CLOSING DATE"), at noon at the local office of Landlord's counsel, or at such other time and place as the parties hereto may agree upon, this Lease shall be automatically extended to and including the Closing Date (or, if applicable, the extended Closing Date hereinafter described) and Tenant shall pay the Purchase Price and Additions to Purchase Price by transferring immediately available funds to such account or accounts and in such bank or banks as Lender or Landlord, in that order, shall designate, upon delivery to Tenant of a deed (of the same type pursuant to which the Leased Premises were conveyed to Landlord) conveying the portion of the Leased Premises, if any, remaining after the Taking and all other required documents including an assignment of any award in connection with the taking of the Leased Premises. Such deed shall convey title, free from encumbrances other than (A) Permitted

Encumbrances, (B) liens or encumbrances created or suffered by Tenant or arising from or relating to the failure of Tenant to observe or perform any of the terms, covenants or agreements herein provided to be observed and performed by Tenant, (C) any installments of Impositions then affecting the Leased Premises, (D) this Lease, (E) the Taking and (F) any other matters as to which Tenant has consented. The Purchase Price and Additions to Purchase Price payable as hereinabove provided shall be charged or credited, as the case may be, on the Closing Date, to reflect adjustments of Basic Rent paid or payable to and including the Closing Date, apportioned as of the Closing Date. Tenant shall pay all closing costs and expenses in connection with the purchase, including but not limited to escrow costs, any costs of title insurance, and all conveyance, transfer, sales and like taxes in connection with the purchase, regardless of who is required to pay such taxes under State or local law or custom (and Tenant shall also pay to Landlord any amount necessary to yield to Landlord a net amount equal to the entire Purchase Price and Additions to Purchase Price if as a matter of the Law of the State or locality such tax cannot be paid directly by Tenant). If there be any liens or encumbrances against the Leased Premises which Landlord is obligated to remove, upon request made a reasonable time before the Closing Date, Landlord shall provide at the

Closing separate funds for the foregoing, payable to the holder of such lien or encumbrances.

(iii) IF TENANT PURCHASES THE LEASED PREMISES PURSUANT TO THIS PARAGRAPH 13b, LANDLORD WILL SELL AND TRANSFER THE LEASED PREMISES, AND TENANT WILL PURCHASE AND TAKE THE LEASED PREMISES "AS IS", AND TENANT ACKNOWLEDGES THAT LANDLORD (WHETHER ACTING AS SELLER HEREUNDER OR IN ANY OTHER CAPACITY) WILL NOT MAKE, NOR SHALL LANDLORD BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE LEASED PREMISES, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO ITS FITNESS FOR ANY USE OR PURPOSE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, AS TO LANDLORD'S TITLE THERETO, OR AS TO VALUE, COMPLIANCE WITH LEGAL REQUIREMENTS, INSURANCE REQUIREMENTS SPECIFICATIONS, LOCATION, USE, CONDITION, MERCHANTABILITY, QUALITY, DESCRIPTION, DURABILITY OR OPERATION, IT BEING AGREED THAT ALL RISKS INCIDENT TO ALL OF THESE MATTERS ARE TO BE BORNE BY TENANT (AS PURCHASER). TENANT ACKNOWLEDGES THAT THE LEASED PREMISES ARE OF ITS SELECTION AND THAT THE LEASED PREMISES AND ALL COMPONENTS THEREOF HAVE BEEN DEVELOPED, DESIGNED, SPECIFIED AND CONSTRUCTED BY AN AFFILIATE OF TENANT AT TENANT'S REQUEST AND HAVE BEEN INSPECTED BY TENANT AND WILL DURING THE TERM OF THE LEASE BE MAINTAINED AND REPAIRED (AND WHEN NECESSARY, REPLACED) BY TENANT. IN THE EVENT OF ANY DEFECT OR DEFICIENCY IN ANY OF THE LEASED PREMISES OF ANY NATURE, WHETHER PATENT OR LATENT, LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO OR FOR ANY INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES (INCLUDING STRICT LIABILITY IN TORT). THE PROVISIONS OF THIS PARAGRAPH 3b(iii) HAVE BEEN NEGOTIATED, AND THE FOREGOING PROVISIONS ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY REPRESENTATIONS OR WARRANTIES BY LANDLORD, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE LEASED PREMISES, ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE AS ADOPTED BY THE STATE OR ANY OTHER LAW OR REGULATION NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

(iv) In the event that after the first Renewal Term, Tenant shall serve a Tenant's Termination Notice upon Landlord, this Lease and the Term hereof shall terminate on the Termination Date specified in the Termination Notice; and in such event the entire award to the made in the Condemnation proceeding shall be paid to Lender or to Landlord, in that order.

c. (i) In the event of a Condemnation of any part of the Leased Premises which does not result in a Termination of this Lease, subject to the requirements of Paragraph 15, the Net Award of such Condemnation shall be retained by Landlord subject to the provisions of (c)(ii) below; and promptly after such Condemnation, Tenant shall commence and diligently continue to restore the Leased Premises as nearly as possible to its value, condition and character immediately prior to such Condemnation, in accordance with the provisions of this Lease, including but not limited to the provisions of Paragraphs 11 (a), 12 and 15 (such restoration following a Condemnation and restoration following a casualty is, as the context shall require, herein called a "RESTORATION").

(ii) Upon the payment to Landlord of the Net Award of a

Taking which falls within the provisions of this Paragraph 13(c), Landlord and Lender shall, to the extent received, make that portion of the Net Award equal to the cost of Restoration (the "RESTORATION AWARD") available to Tenant for Restoration, in accordance with the provisions of Paragraph 15, and promptly after completion of the Restoration, the balance of the Net Award shall be retained by Landlord (or if required by Lender, applied to reduce the outstanding principal balance of any Note or Notes secured by a Mortgage), and all Basic Rent, Additional Rent and other sums payable hereunder shall continue unabated and unreduced.

(iii) In the event of a Requisition of the Leased Premises, Landlord shall apply the Net Award of such Requisition, to the extent available, to the installments of Basic Rent, Additional Rent or other sums payable by Tenant hereunder thereafter payable and Tenant shall pay any balance remaining thereafter. Upon the expiration of the Term, any portion of such Net Award which shall not have been previously credited to Tenant on account of the Basic Rent and Additional Rent shall be retained by Landlord.

d. Except with respect to an award or payment to which Tenant is entitled pursuant to the provisions of Paragraph 13(a), 13(b) and 13(c), no agreement with any condemner in settlement of or under threat of any Condemnation shall be made by Tenant without the written consent of Landlord, and of Lender, if the Leased Premises are then subject to a Mortgage, which consent shall not be unreasonably withheld or delayed.

14. Insurance.

a. Tenant shall maintain at its sole cost and expense the following insurance on the Leased Premises:

(i) Insurance against loss or damage to the Improvements and Equipment under a fire and broad form of all risk extended coverage insurance policy (which shall include flood insurance if the Leased Premises is located within a flood hazard area and which shall include earthquake insurance if the Leased Premises is located in an area where earthquake insurance is customarily maintained for similar commercial properties). Such insurance shall be in amounts sufficient to prevent Landlord or Tenant from becoming a co-insurer under the applicable policies, and in any event in amounts not less than the full replacement cost of the Improvements and

Equipment (including but not limited to the cost of demolition of the damaged Improvements and the cost associated with changes in Legal Requirements, but excluding footings and foundations and other parts of the Improvements which are not insurable) as determined from time to time at Lender's request but not more frequently than once in any 12-month period, by agreement of Landlord, Lender, and Tenant, or if not so agreed, at Tenant's expense, by the insurer or insurers or by an appraiser approved by Landlord. Such insurance policies may contain commercially reasonable exclusions and deductible amounts as such amounts are determined by Landlord and Lender.

(ii) Commercial general liability insurance (including contractual indemnity) against claims for bodily injury, death or property damage occurring on, in or about the Leased Premises, which insurance shall be written on a so-called "occurrence basis," and shall provide minimum protection with a combined single limit in an amount not less than Two Million Dollars (\$2,000,000.00) and excess liability coverage of Ten Million Dollars (\$10,000,000.00) (or in each case in such increased limits from time to time to reflect declines in the purchasing power of the dollar as Landlord may reasonably request).

(iii) Worker's compensation insurance covering all persons employed by Tenant on the Leased Premises in connection with any work done on or about any of the Leased Premises for which claims for death or bodily injury could be asserted against Landlord, Tenant or the Leased Premises.

(iv) During periods of war or national emergency, war risk insurance in an amount not less than the actual replacement cost of the Improvements and Equipment (excluding footings and foundations and other parts of the Improvements which are not insurable), when and to the extent obtainable from the United States Government or an agency thereof at reasonable cost.

(v) Insurance against loss or damage from explosion of any steam or pressure boilers or similar apparatus located in or about the Improvements in an amount not less than the full replacement cost of the Improvements and Equipment (including but not limited to the cost of demolition of the damaged Improvements and the cost associated with changes in Legal Requirements, but excluding footings and foundations and other parts of the Improvements which are not insurable).

(vi) Business interruption insurance in an amount equal to at least one (1) year's Basic Rent.

(vii) Such additional and/or other insurance with respect to the Improvements located on the Leased Premises and in such amounts as at the time is customarily carried by prudent owners or tenants with respect to improvements similar in character, location and use and occupancy to the Improvements located on the Leased Premises.

b. The insurance required by Paragraph 14(a) shall be written by companies having a claims paying ability rating by Standard & Poors of not less than A-, and all such companies shall be authorized to do an insurance business in the State, or otherwise agreed to by Landlord and Lender. The insurance policies (i) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof, and (ii) shall (except for the worker's compensation insurance referred to in Paragraph 14(a)(iii) hereof) name Landlord, Tenant, and any Lender as additional insured parties, as their respective interests may appear, (iii) shall be for a term of not less than twelve (12) months, (iv) shall be primary and non-contributory; (v) shall insure all Tenant's indemnities given in this Lease, and (vi) shall contain a cross-liability endorsement. No insurance maintained or required to be maintained by Tenant hereunder or otherwise shall limit Tenant's indemnification obligations under Paragraph 10 or any other provision of this Lease. If said insurance or any part thereof shall expire, be withdrawn, become void by breach of any condition thereof by Tenant or become void or unsafe by reason of the failure or impairment of the capital of any insurer, Tenant shall immediately obtain new or additional insurance reasonably satisfactory to Landlord and Lender.

c. Each insurance policy referred to in clauses (i), (iv), (v), (and (vi) if requested by Lender) of Paragraph 14(a), shall contain a mortgagee loss payee clause and standard non-contributory mortgagee clauses in favor of any Lender which holds a Mortgage on the Leased Premises. Each policy shall provide that it may not expire or be canceled or materially modified as to coverage or otherwise except after thirty (30) days prior written notice to Landlord and any Lender. Each policy shall also provide that any losses otherwise payable thereunder shall be payable notwithstanding (i) any act or omission of Landlord or Tenant which might, absent such provision, result in a forfeiture of all or a part of such insurance payment, (ii) the occupation or use of any of the Leased Premises for purposes more hazardous than permitted by the provisions of such policy, (iii) any foreclosure or other action or proceeding taken by any Lender pursuant to any provision of the Mortgage upon the happening of an event of default thereunder, or (iv) any change in title or ownership or occupancy of the Leased Premises.

d. Tenant shall pay as they become due all premiums for the insurance required by this Paragraph 14, shall renew or replace each policy, and shall deliver to Landlord and Lender a certificate or other evidence (reasonably satisfactory to Lender and Landlord) of the existing policy and such renewal or replacement policy at least thirty (30) days prior to the expiration date of each policy. Tenant shall also provide to Landlord true and correct copies of each such policy promptly after Landlord's request therefor. Each such policy shall provide that it shall not expire until the Landlord and the Lender shall receive a notice from the insurer to the effect that a policy will expire on a date which shall be thirty (30) days following the date of the receipt by Landlord and Lender of such notice. In the event of Tenant's failure to comply with any of the foregoing requirements of this Paragraph 14 within five (5) business days of the giving of written notice by Landlord to Tenant, Landlord shall be entitled (but not obligated) to procure such insurance. Any sums expended by Landlord in procuring such insurance shall be Additional Rent and shall be repaid by Tenant, together with interest thereon at the Default Rate, from the time of payment by Landlord until fully paid by Tenant immediately upon written demand therefor by Landlord.

e. Anything in this Paragraph 14 to the contrary notwithstanding, any insurance which Tenant is required to obtain pursuant to Paragraph 14(a) may be carried under a "blanket" policy or policies covering other properties or

liabilities of Tenant, provided that such "blanket" policy or policies otherwise comply with the provisions of this Paragraph 14 and do not reduce or otherwise adversely affect coverage of the Leased Premises. In the event any such insurance is carried under a blanket policy, Tenant shall deliver to Landlord and Lender evidence of the issuance and effectiveness of the policy, the amount and character of the coverage with respect to the Leased Premises and the presence in the policy of provisions of the character required in the above sections of this Paragraph 14.

f. In the event of any casualty loss exceeding Twenty Five Thousand Dollars (\$25,000.00), Tenant shall give Landlord immediate written notice thereof. Tenant shall adjust, collect and compromise any and all claims, with the consent of Lender and Landlord, not to be unreasonably withheld or delayed, and Landlord and Lender shall have the right to join with Tenant therein. If the estimated cost of Restoration or repair shall be One Hundred Thousand Dollars (\$100,000.00) or less, all proceeds of any insurance required under clauses (i), (iv), and (v) (and (vi) if requested by Lender) of Paragraph 14(a) hereof shall be payable to Tenant, provided that Tenant is not in default hereunder and that Tenant (or the guarantor of the Tenant's obligations under this Lease) at such time shall have a tangible net worth of not less than One Hundred Million Dollars (\$100,000,000.00) as determined in accordance with generally accepted accounting principles, consistently applied, and in all other events to a Trustee which shall be a federally insured bank or other financial institution, selected by Landlord and Tenant and reasonably satisfactory to Lender (the "TRUSTEE"). If the Leased Premises shall be covered by a Mortgage, Lender, if it so desires, shall be the Trustee. Each insurer is hereby authorized and directed to make payment under said policies directly to such Trustee instead of to Landlord and Tenant jointly; and Tenant and Landlord each hereby appoints such Trustee as its attorney-in-fact to endorse any draft therefor for the purposes set forth in this Lease after approval by Tenant of such Trustee, if Trustee is other than Lender. Except as stated in Paragraph 14(g) below, in the event of any casualty (whether or not insured against) resulting in damage to or depreciation of the Leased Premises or any part thereof, the Term shall nevertheless continue and there shall be no abatement or reduction of Basic Rent, Additional Rent or any other sums payable by Tenant hereunder. The Net Proceeds of such insurance payment shall be retained by the Trustee and, promptly after such casualty, Tenant, as required in accordance with Paragraphs 11(a) and 12, shall commence and diligently continue to perform the Restoration to the Leased Premises. Upon payment to the Trustee of such Net Proceeds, the Trustee shall, to the extent available, make the Net Proceeds available to Tenant for Restoration, in accordance with the provisions of Paragraph 15. Tenant shall at its sole cost and expense, whether or not the Net Proceeds are sufficient for the purpose, promptly repair or replace the Improvements and Equipment in accordance with the provisions of Paragraph 11(a) and the Net Proceeds of such loss shall thereupon be payable to Tenant, subject to the provisions of Paragraph 15 hereof. In the event that any damage or destruction shall occur at such time as Tenant shall not have maintained third-party insurance in accordance with Paragraph 14(a) (i), (iv), (v) or (vi), Tenant shall pay to the Trustee promptly after the occurrence of such damage or destruction the amount of the proceeds that would have been payable had such insurance program been in effect (the "TENANT INSURANCE PAYMENT").

g. Notwithstanding anything to the contrary contained herein, if at any time from and after the first thirty six (36) months of the first Renewal Term all or substantially all of the Leased Premises are damaged or destroyed by fire or other casualty which, in the Tenant's reasonable judgment renders the Leased Premises unsuitable for Restoration to allow continued use and occupancy by the Tenant, then Tenant may elect to terminate this Lease by written notice to Landlord and Lender, but only if such election is made within ninety (90) days of the casualty. If Tenant timely elects to terminate this Lease under this Paragraph 14g, then this Lease shall terminate, and Tenant shall assign and deliver all insurance proceeds to the Landlord and shall pay to Landlord the amount of any deductibles.

15. Restoration. Net Proceeds, Restoration Award and Tenant Insurance Payment (the aggregate of which being herein defined as the "RESTORATION FUND") shall be disbursed by the Trustee in accordance with the following conditions:

a. If the cost of Restoration will exceed \$100,000.00, prior to commencement of the Restoration, the architects, general contractor(s), and plans and specifications for the Restoration shall be approved by Landlord, which approval shall not be unreasonably withheld or delayed; and which approval shall be granted to the extent that the plans and specifications depict a Restoration which is substantially similar to the Improvements and Equipment which existed prior to the occurrence of the Casualty or Taking, whichever is

applicable.

b. At the time of any disbursement, no Event of Default shall exist and no mechanics' or materialmen's liens shall have been filed and remain undischarged or unbonded, subject to the provisions of Paragraph 18 hereof.

c. Disbursements shall be made from time to time in an amount not exceeding the direct hard and direct soft cost of the Work and costs incurred since the last disbursement upon receipt of (1) satisfactory evidence, including architects' certificates of the stage of completion, of the estimated cost of completion and of performance of the Work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications and with all Insurance Requirements and Legal Requirements, (2) partial releases of liens, and (3) other reasonable evidence of cost and payment so that Landlord can verify that the amounts disbursed from time to time are represented by work that is completed in place or delivered to the site and free and clear of mechanics' lien claims and (4) satisfactory evidence that the undisbursed funds are sufficient to complete the remaining Work.

d. Each request for disbursement shall be accompanied by a certificate of Tenant describing the Work for which payment is requested, stating the cost incurred in connection therewith and stating that Tenant has not previously received payment for such Work, and the certificate to be delivered by Tenant upon completion of the Work shall, in addition, state that the Work has been substantially completed and complies with all Legal Requirements, Insurance Requirements approved plans and specifications and the applicable requirements of this Lease.

e. The Trustee may retain ten percent (10%) of the Restoration Fund until thirty (30) days after the Restoration is substantially complete and all governmental approvals are issued.

f. The Restoration Fund shall be kept in a separate interest-bearing federally insured account by the Trustee or by Lender.

g. At all times the undisbursed balance of the Restoration Fund held by Trustee plus any funds contributed thereto by Tenant, at its option, shall be not less than the cost of completing the Restoration, free and clear of all liens.

h. In addition, prior to commencement of Restoration and at any time during Restoration, if the estimated cost of Restoration, as reasonably determined by Landlord, exceeds the amount of the Net Proceeds, the Restoration Award and Tenant Insurance Payment available for such Restoration, the amount of such excess shall be paid by Tenant to the Trustee to be added to the Restoration Fund or Tenant shall fund at its own expense the costs of such Restoration until the remaining Restoration Fund is sufficient for the completion of the Restoration. Any sum in the Restoration Fund which remains in the Restoration Fund upon the completion of Restoration and disbursement of funds (to the extent available) to Tenant covering the cost of the Work, and return to Tenant of any unused funds which were added to the Restoration Fund by Tenant, shall be paid to Landlord. For purposes of determining the source of funds with respect to the disposition of funds remaining after the completion of Restoration, the Net Proceeds or the Restoration Award shall be deemed to be disbursed prior to any amount added by Tenant.

16. Subordination to Financing.

a. (i) Subject to the provisions of Paragraph 16 (a) (ii), and subject to the execution and timely delivery to Tenant by Lender of an instrument in accordance with Paragraph 16(d), Tenant agrees that this Lease shall at all times be subject and subordinate to the lien of any Mortgage, and Tenant agrees, upon demand, without cost, to execute instruments as may be required to further effectuate or confirm such subordination.

(ii) Except as expressly provided in this Lease by reason of the occurrence of an Event of Default, Tenant's tenancy and Tenant's rights under this Lease shall not be disturbed, terminated, or otherwise adversely affected, nor shall this Lease be affected, by any default under any Mortgage, and in the event of a foreclosure or other enforcement of any Mortgage, or sale in lieu thereof, the purchaser at such foreclosure sale shall be bound to Tenant, subject to the provisions of Paragraph 25 hereof, for the Term of this Lease and any Renewal Term, the rights of Tenant under this Lease shall expressly survive, and this Lease shall in all respects continue in full force and effect so long as no Event of Default has occurred and is continuing. Tenant

shall not be named as a party defendant in any such foreclosure suit, except as may be required by law. Any Mortgage to which this Lease is now or hereafter subordinate shall provide, in effect, that during the time this Lease is in force insurance proceeds and

Restoration Award shall be permitted to be used for Restoration in accordance with the provisions of this Lease.

b. Notwithstanding the provisions of Paragraph 16(a), the holder of any Mortgage to which this Lease is subject and subordinate shall have the right, at its sole option, at any time, to subordinate and subject the Mortgage, in whole or in part, to this Lease by recording a unilateral declaration to such effect, provided that such holder shall have agreed that during the time this Lease is in force, insurance proceeds and Restoration Award shall be permitted to be used for restoration in accordance with the provisions of this Lease.

c. At any time prior to the expiration of the Term, Tenant agrees, at the election and upon demand of any owner of the Leased Premises, or of a Lender who has granted non-disturbance to Tenant pursuant to Paragraph 16(a) above, to attorn, from time to time, to any such owner or Lender, upon the terms and conditions of this Lease, for the remainder of the Term. The provisions of this Paragraph 16(c) shall inure to the benefit of any such owner or Lender, shall apply notwithstanding that, as a matter of law, this Lease may terminate upon the foreclosure of the Mortgage, shall be self-operative upon any such demand, and no further instrument shall be required to give effect to said provisions.

d. Each of Tenant, any owner and Lender, however, upon demand of the other, hereby agrees to execute, from time to time, instruments in confirmation of the foregoing provisions of Paragraphs 16(a) and 16(c) reasonably satisfactory to the requesting party acknowledging such subordination, non-disturbance and attornment as are provided in such subsections, to the extent applicable.

e. Upon Lender's request, Landlord, Tenant and Lender shall enter into a "subordination, nondisturbance and attornment" pursuant to which Tenant shall subordinate its leasehold interest in the Leased Premises to the lien of the Mortgage, and shall agree to attorn to Lender or any purchaser at a foreclosure sale, as successor landlord, if Lender or any purchaser at a foreclosure sale succeeds to Landlord's interest in the Leased Premises, provided that Tenant's tenancy will not be disturbed as long as no Event of Default has occurred hereunder. Such agreement shall include certain terms and conditions as customarily afforded to institutional lenders negotiating with sophisticated landlords and tenants with respect to mortgage financing, intended for the protection and benefit of the Lender, and its successors and assigns as may succeed to the interest of Landlord under this Lease. Tenant hereby agrees for the benefit of Lender that Tenant will not, (i) without in each case the prior written consent of Lender, which shall not be unreasonably withheld, conditioned or delayed, amend or modify this Lease (provided, however, Lender, in Lender's sole discretion may withhold or condition its consent to any amendment or modification which would or could (A) alter in any way the amount or time for payment of any Basic Rent, Additional Rent or other sum payable hereunder, (B) alter in any way the absolute and unconditional nature of Tenant's obligations hereunder or materially diminish any such obligations, (C) result in any termination hereof prior to the end of the Term, or (D) otherwise, in Lender's reasonable judgment, affect the rights or obligations of Landlord or Tenant hereunder), or enter into any agreement with Landlord so to do, (ii) without the prior written consent of Lender which may be withheld in Lender's sole discretion, cancel or

surrender or seek to cancel or surrender this Lease or the Term hereof, or enter into any agreement with Landlord to do so (the parties agreeing that the foregoing shall not be construed to affect the rights or obligations of Tenant, Landlord or Lender with respect to any termination permitted under the express terms hereof in connection with an offer to purchase the Leased Premises following certain events of condemnation as provided in Section 13 hereof), or (iii) pay any installment of Basic Rent more than one (1) month in advance of the due date thereof or otherwise than in the manner provided for in this Lease.

17. Assignment or Subleasing.

a. Notwithstanding anything contained in this Lease to the contrary, Tenant may not assign hypothecate, pledge or otherwise transfer its interest in this Lease without the prior written consent of Landlord, which may be withheld in the sole and absolute discretion of Landlord, unless such

assignment is to a successor-by-merger or an entity controlling, controlled by or under common control with Tenant. (For purposes of the preceding sentence, the term "control" and the derivatives thereof means the ownership of more than fifty percent (50%) of the equity interests in an entity.) Tenant may not sublease the Demised Premises, in whole or in part, without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. For purposes of this Section 17 any transfer of 25% or more of the ownership interest in Tenant, any change in the general partner of Tenant or sale of all or substantially all of the assets of Tenant shall be deemed an assignment requiring Landlord's consent

b. Each sublease of the Leased Premises or any part thereof shall be subject and subordinate to the provisions of this Lease. In no event will any sublease be construed as a direct lease or other obligation between Landlord and any subtenant, provided, however, that notwithstanding the foregoing, Landlord shall be named as a third party beneficiary of all subtenants' respective obligations under all subleases. No assignment or sublease shall affect or reduce any of the obligations of Tenant hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no assignment or sublease had been made, and no assignment or sublease shall offset or reduce any of the obligations of the Guarantor under the Guaranty. Notwithstanding any assignment or subletting Tenant shall continue to remain primarily liable and responsible for the payment of the Basic Rent and Additional Rent and the performance of all its other obligations under this Lease, as and when required to be paid and performed hereunder. No assignment or sublease shall impose any obligations on Landlord under this Lease except as otherwise provided in this Lease. Tenant agrees that in the case of an assignment of the Lease, Tenant shall, within fifteen (15) days after the execution and delivery of any such assignment, deliver to Landlord (i) a duplicate original of such assignment in recordable form and (ii) an agreement executed and acknowledged by the assignee in recordable form (and in a form acceptable to Landlord and Lender) wherein the assignee shall agree to assume and agree to observe and perform all of the terms and provisions of this Lease on the part of the Tenant to be observed and performed from and after the date of such assignment. In the case of a sublease, Tenant shall, within fifteen (15) days after the execution and delivery of such sublease, deliver to Landlord a duplicate original of such sublease.

c. Consent by Landlord to one or more assignments of this Lease or to one or more sublettings of all or part of the Leased Premises shall not be deemed to be a consent to any subsequent assignment or subletting. Any assignment or subletting without Landlord's consent shall be void and, in addition, shall constitute a breach of this Lease. Tenant shall reimburse Landlord as additional rent the greater of: (i) \$1,500; and, (ii) Landlord's reasonable attorney's fees (not to exceed \$2,500) and costs incurred in conjunction with the processing and documentation of any such requested assignment, subletting, transfer, change of ownership or hypothecation of this Lease or Tenant's interest in and to the Leased Premises.

d. Upon the occurrence of an Event of Default under this Lease, Landlord shall have the right to collect and enjoy all rents and other sums of money payable under any sublease of any of the Leased Premises, and Tenant hereby irrevocably and unconditionally assigns such rents and money to Landlord, which assignment may be exercised upon and after (but not before) the occurrence of an Event of Default.

18. Permitted Contests.

a. After prior written notice to Landlord and Lender, Tenant shall not be required to (i) pay any Imposition, (ii) comply with any Legal Requirement, (iii) discharge or remove any lien referred to in Paragraphs 9 or 12, or (iv) take any action with respect to any violation referred to in Paragraph 11 (b), so long as Tenant shall contest, in good faith and at its sole cost and expense, the existence, the amount or the validity thereof, the amount of the damages caused thereby, or the extent of its or Landlord's liability therefor, by appropriate proceedings which, as a condition to Tenant's right to contest the same pursuant to this Paragraph 18, shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon, the Imposition or lien so contested, (B) the sale, forfeiture or loss of any of the Leased Premises, any Basic Rent or any Additional Rent to satisfy the same or to pay any damages, fines or penalties caused by the violation of any such Legal Requirement, (C) any interference with the use or occupancy of any of the Leased Premises, (D) any interference with the payment of any Basic Rent or any Additional Rent or other sums payable hereunder, and (E) the cancellation of any fire or other insurance policy. If Tenant's consolidated tangible net worth (as

determined on a consolidated basis using generally accepted accounting principles consistently applied) shall be less than One Hundred Million Dollars (\$100,000,000.00) at the time of commencement of or at any time during any such contest, Tenant shall provide to Landlord and Lender a bond of a surety acceptable to Landlord and Lender in an amount satisfactory to Landlord and Lender.

b. In no event shall Tenant pursue any contest with respect to any Imposition, Legal Requirement, lien, or violation, referred to above in such manner that exposes Landlord or Lender to the risk of (i) criminal liability, penalty or sanction, (ii) any civil liability, penalty or sanction, or (iii) defeasance of its interest the Leased Premises.

c. Tenant agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion, except that Tenant shall, so long as the conditions of the first sentence of this Paragraph 18 are at all times complied with, have the right to attempt to settle or compromise such contest through negotiations. Tenant shall pay and shall indemnify, defend

(with counsel reasonably acceptable to Landlord or if Landlord elects it may defend itself at Tenant's expense) and save Lender and Landlord harmless against any and all losses, damages, liabilities, judgments, decrees and costs (including all attorneys' fees and expenses) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof.

19. Conditional Limitations; Default Provisions.

a. The occurrence of any one or more of the following events shall constitute an Event of Default under this Lease: (i) a failure by Tenant to make (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which had or might have the effect of preventing Tenant from complying with the provisions of this Lease): (x) any payment of Basic Rent which continues unremedied for a period of five (5) days after written notice in accordance with Paragraph 21 below ("NONPAYMENT NOTICE") thereof given to Tenant by Landlord or Lender or Lender's designee, or (y) any payment of Additional Rent or other sum herein required to be paid by Tenant which continues unremedied for a period of ten (10) days after a Nonpayment Notice is given to Tenant by Landlord or Lender or Lender's designee; (ii) Tenant's failure to deliver any documents or to comply with any of its other obligations pursuant to Paragraphs 16 or 22, respectively, within the applicable time period set forth therein (unless such failure is cured within three (3) days after Landlord's second written request for such documents or compliance), or Tenant's breach of the provisions of Paragraph 17; (iii) Tenant's failure to comply with the terms of any Permitted Encumbrance, REA, Legal Requirement or Insurance Requirement within the times set forth therein, or if no time is specified therein, then within thirty (30) days after written notice thereof is given by Landlord or Lender or Lender's designee to Tenant ("NONPERFORMANCE NOTICE") or if such default is of such a nature that it cannot reasonably be cured within such period of thirty (30) days, such period shall be extended for such longer time as is reasonably necessary provided that Tenant has commenced to cure such default within said period of thirty (30) days and is actively, diligently and in good faith proceeding with continuity to remedy such default; (iv) failure by Tenant to perform and observe, or a violation or breach of, any other provision in this Lease and such default shall continue for a period of thirty (30) days after a Nonperformance Notice is given by Landlord or Lender or Lender's designee to Tenant or if such default is of such a nature that it cannot reasonably be cured within such period of thirty (30) days, such period shall be extended for such longer time as is reasonably necessary provided that Tenant has commenced to cure such default within said period of thirty (30) days and is actively, diligently and in good faith proceeding with continuity to remedy such default; (v) Tenant or Guarantor shall (A) voluntarily be adjudicated a bankrupt or insolvent, (B) voluntarily consent to the appointment of a receiver or trustee for itself or for any of the Leased Premises, (C) voluntarily file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, or (D) voluntarily file a general assignment for the benefit of creditors; (vi) a court shall enter an order, judgment or decree appointing, with the voluntary consent of Tenant or Guarantor, a receiver or trustee for Tenant or Guarantor or for the Leased Premises or approving a petition filed against Tenant or Guarantor which seeks

relief

under the bankruptcy or other similar laws of the United States or any State, and such order, judgment or decree shall remain in force, undischarged or unstayed, ninety (90) days after it is entered; (vii) Tenant or Guarantor hereunder shall in any insolvency proceedings be liquidated or dissolved or shall voluntarily commence proceedings towards its liquidation or dissolution; (viii) the estate or interest of Tenant in the Leased Premises shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred or such process shall not be vacated or discharged within ninety (90) days after such levy or attachment; or (ix) any breach or default of Guarantor under the Guaranty.

b. If any Event of Default shall have occurred and be continuing, Landlord, in addition to any other rights or remedies it may have at law or in equity, may do any one or more of the following:

(i) elect by written notice to Tenant to terminate this Lease; or

(ii) perform, on behalf and at the expense of Tenant (entering upon the Leased Premises for such purpose, if necessary), any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord shall have given Tenant notice, the cost of which performance or liability by Landlord shall be deemed Additional Rent and incurred for the account of Tenant and Tenant shall reimburse Landlord therefor and save Landlord harmless therefrom upon demand provided, however, that Landlord may cure any such default described in this subparagraph prior to the expiration of the waiting period established in Section 19.1, but after notice to Tenant if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the Leased Premises or Landlord's interest in the Premises, or to prevent injury or damage to persons or property. If Tenant shall fail to reimburse Landlord upon demand for any amount paid for the account of Tenant hereunder, said amount shall be added to and become due as a part of the next payment of Basic Rent due hereunder. Notwithstanding anything to the contrary contained herein, in the case of emergency, notice required pursuant to this Paragraph 19 may be given orally or in any other reasonably due and sufficient manner having regard to the emergency and the attending circumstances. If any such notice shall not be given in the manner described in Paragraph 21 of this Lease entitled "Notices", then as soon thereafter as practicable, such notice shall be followed up by notice given in the manner prescribed in said Paragraph. No entry by Landlord, in accordance with the provisions of this Paragraph, shall be deemed to be an eviction of Tenant. Landlord's performance of any such covenant shall neither subject Landlord to liability for any loss, inconvenience or damage to Tenant nor be construed as a waiver of Tenant's default or of any other right or remedy of Landlord in respect of such default, or as a waiver of any covenant, term or condition of this Lease; or

(iii) immediately, using such force as may be reasonably necessary, re-enter upon the Premises, remove all persons and property therefrom, and store such property in a public warehouse or elsewhere at the sole cost and for the account of Tenant, all without service of notice or resort to legal process, without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned

thereby (except for any loss or damage resulting from or caused by the gross negligence or criminal act of Landlord or its employees, agents or contractors), and without such re-entry being deemed to terminate this Lease.

c. In the event Landlord re-enters upon the Premises as provided in clause (iii) of the foregoing Section 19.b or takes possession of the Premises as provided herein or pursuant to legal proceedings or pursuant to any notice provided for by law, then in addition to all other rights and remedies provided or accruing to Landlord at law or in equity:

(i) Landlord may terminate this Lease and forthwith repossess the Premises and remove all persons or property therefrom and be entitled to recover from Tenant, as damages, the sum of money equal to the total of (i) the reasonable cost of recovering the Premises, (ii) the accrued and unpaid rentals owed at the time of termination plus interest thereon from such due date at the maximum rate permitted by law, (iii) the discounted net present value, at the discount rate of the Federal Reserve

Bank of San Francisco, California, of the balance of the Base Rent for the remainder of the Term to the extent the same exceeds the then fair market rental value of the Premises for the balance of the Term (with due consideration for the costs and delay in reletting), and (iv) any other sum of money and damages owed by Tenant to Landlord; or

(ii) Landlord may terminate Tenant's right of possession (but not this Lease) and may repossess the Premises without demand or notice of any kind to Tenant and without terminating this Lease in which event Landlord shall, to the extent required under applicable law, relet the same for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord. For the purpose of such reletting, Landlord is authorized to make repairs, changes, alterations or additions to the Premises to make same relettable, and (i) if Landlord shall be unable to relet the Premises, or (ii) if the same are relet and sufficient sums shall not be realized from such reletting (after paying: (a) the unpaid rentals due under the Lease earned, but unpaid at the time of reletting plus interest thereon at the maximum rate permitted by applicable law, (b) the cost of recovering possession, including Landlord's attorney's fees, (c) all of the costs and expenses of reletting including advertising therefor, decorations, repairs, changes, alterations and additions by Landlord, and (d) the expense of the collection of the Basic Rent and Additional Rent accruing therefrom) to satisfy the rent and all other charges provided for in this Lease to be paid by Tenant then Tenant shall pay to Landlord, as damages, the sum equal to the amount of the Basic Rent, and Additional Rent and other expenses payable by Tenant for such period or periods, or if the Premises have been relet, Tenant shall satisfy and pay any such deficiency upon demand therefore from time to time and Tenant agrees that Landlord may file suit to recover any sums falling due under the terms of this Paragraph from time to time upon one or more occasions without Landlord being obligated to wait until expiration of the term of this Lease. Such reletting shall not be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such termination be given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Failure of Landlord to declare any default immediately upon occurrence thereof or delay in taking any action in

connection therewith shall not waive such default but Landlord shall have the right to declare any such default at any time thereafter.

d. In the event that Landlord at any time terminates this Lease for any default by Tenant, in addition to any other remedies Landlord may have, Landlord may recover from Tenant (i) all damages Landlord may incur by reason of such default, including, without limitation, all repossession costs, brokerage commissions, court costs, attorneys fees, alteration, reletting advertising and refitting and repair costs, (ii) the accrued and unpaid rentals owed at the time of termination plus interest thereon from such due date at the maximum rate permitted by law, (iii) the discounted net present value, at the discount rate of the Federal Reserve Bank of San Francisco, California, of the balance of the Basic Rent, Additional Rent and any other amounts payable by Tenant for the remainder of the Term to the extent the same exceeds the then fair market rental value of the Premises for the balance of the Term (with due consideration given to the costs and delay of reletting), and (iv) any other sum of money and damages owed by Tenant to Landlord. All such amounts shall be immediately due and payable from Tenant to Landlord.

e. In the event of a default by Landlord under this Lease, Tenant's sole and exclusive remedy shall be an action at law for damages (excluding consequential damages), and Tenant shall not be entitled to terminate this Lease, abate or "off-set" or deduct from Rent, or exercise any legal or equitable remedy that would result in a termination of this Lease or abatement or "off-set" of or deduction from the Rent.

20. Additional Rights of Landlord and Tenant.

a. No right or remedy conferred upon or reserved to Landlord in this Lease or available to Landlord by law or in equity is intended to be exclusive of any other right or remedy; and each and every right and remedy shall be cumulative and in addition to any other right or remedy contained in this Lease or available at law or in equity. No delay or failure by Landlord or Tenant to enforce its rights under this Lease shall be construed as a waiver, modification or relinquishment thereof. In addition to the other remedies provided in this Lease, Landlord and Tenant shall be entitled, to the extent

permitted by applicable law, to injunctive relief in case of the violation or attempted or threatened violation of any of the provisions of this Lease, or to specific performance of any of the provisions of this Lease.

b. Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, any right and privilege which it or any of them may have under any present or future law to redeem any of the Leased Premises or to have a continuance or reinstatement of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof.

c. Landlord hereby waives any right to distrain or levy upon Trade Fixtures or any property of Tenant and any Landlord's lien or similar lien upon Trade Fixtures and any other property of Tenant regardless of whether such lien is created or otherwise. Landlord agrees at the request of Tenant, to execute a waiver of any Landlord's or similar lien for the benefit of any present or future holder of a security interest in or lessor of any of Trade Fixtures or any other personal property of Tenant.

d. Landlord acknowledges and agrees in the future to acknowledge (in a written form reasonably satisfactory to Tenant and Landlord) to such persons and entities at such times and for such purposes as Tenant may reasonably request that the Trade Fixtures are Tenant's property and not part of the Improvements (to the extent the same can be removed without material damage to the Improvements) or otherwise subject to the terms of this Lease.

e. Each of Tenant and Landlord (herein called "PAYING PARTY") agrees to pay to the other party (herein called "DEMANDING PARTY") any and all attorney's fees and other reasonable costs and expenses incurred by the Demanding Party in connection with any litigation or other action instituted by the Demanding Party to interpret the provisions of this Lease or to enforce the obligations of the Paying Party under this Lease, to the extent that the Demanding Party has prevailed in any such litigation or other action. Any amount payable by Tenant to Landlord pursuant to this Paragraph 20(e) shall be due and payable by Tenant to Landlord as Additional Rent. No sum payable by Landlord to Tenant under this subparagraph will be payable or recoverable from any sums pledged or assigned (or intended to have been pledged or assigned) by Landlord to Lender, Tenant's right to recover such sums from Landlord being subordinate to the rights of Lender, such sums only being recoverable after payment to Lender in full of the indebtedness secured by the Mortgage.

21. Notices. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given pursuant to the provisions of this Lease (collectively "Notice" or "NOTICES") shall be in writing and shall be deemed to have been given for all purposes (i) three (3) days after having been sent by United States mail, by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at its address as stated below, or (ii) one (1) business day after having been sent by Federal Express, United Parcel or other nationally recognized overnight, air courier service.

To the Addresses stated below:

If to Landlord:

Landfair, LLC
c/o Elysee Management Group, Inc.
27520 Hawthorne Boulevard, Suite 235
Rolling Hills, California 90274
Attn: Mr. Wayne Kao

With a copy to:

Irell & Manella, LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Attn: Mark Wiesenthal, Esq.

If to Tenant:

Dave & Buster's, Inc.
2481 Manana Drive
Dallas, Texas 75220
Attn: Legal Department

With a copy to:

Kane, Russell, Coleman & Logan, P.C.
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Attn: Scott A. Dyche

If any Lender shall have advised Tenant by Notice in the manner aforesaid that it is the holder of a Mortgage and states in said Notice its address for the receipt of Notices, then simultaneously with the giving of any Notice by Tenant to Landlord, Tenant shall send a copy of such Notice to Lender in the manner aforesaid. For the purposes of this Paragraph 21, any party may substitute its address by giving ten (10) days' notice to the other party in the manner provided above. Any Notice may be given on behalf of any party by its counsel.

22. Estoppel Certificates. Landlord and Tenant shall at any time and from time to time, upon not less than ten (10) days' prior written request by the other, execute, acknowledge and deliver to the other a statement in writing, certifying (i) that this Lease is unmodified and in full effect (or, if there have been modifications, that this Lease is in full effect as modified, setting forth such modifications), (ii) the dates to which Basic Rent and other charges payable hereunder have been paid, (iii) that to the knowledge of the signer of such certificate, Landlord is not in material default under the Lease and no circumstance exists which with the giving of notice or passage of time or both would constitute such a material default by Landlord, and no Event of Default (or circumstance which with the giving of notice or passage of time, or both would constitute an Event of Default) by Tenant exists (except, in each case, as specified in such certificate), (iv) the remaining Term hereof, (v) with respect to a certificate signed on behalf of Tenant, that to the knowledge of the signer of such certificate, there are no proceedings pending or threatened against Tenant before or by any court or administrative agency which if adversely decided would materially and adversely affect the financial condition and operations of Tenant or if any such proceedings are pending or threatened to said signer's knowledge, specifying and describing the same, (vi) with respect to a certificate signed on behalf of Tenant, that Tenant has no defense, set-off, or counterclaim to its obligation to pay rent and other amounts required

under the Lease, and (vii) such other matters as may reasonably be requested by the party requesting the certificate. It is intended that any such statements may be relied upon by Landlord, Tenant, Lender (including prospective Lenders), the recipient of such statements or their assignees or by any prospective purchaser, assignee or subtenant of the Leased Premises.

23. Surrender and Holding Over. Upon the expiration or earlier termination of this Lease, Tenant shall peaceably leave and surrender the Leased Premises (except as to any portion thereof with respect to which this Lease has previously terminated) to Landlord in broom clean condition, and otherwise in the same condition in which the Leased Premises were originally received from Landlord on the Commencement Date, except as repaired, rebuilt, restored, altered, replaced or added to as permitted or required by any provision of this Lease, and except for ordinary wear and tear. Tenant shall remove from the Leased Premises on or prior to such expiration or earlier termination the Trade Fixtures and personal property which is owned by Tenant or third parties other than Landlord, and Tenant at its expense shall, on or prior to such expiration or earlier Termination, repair any damage caused by such removal. Trade Fixtures and personal property not so removed at the end of the Term or within thirty (30) days after the earlier termination of the Term for any reason whatsoever shall become the property of Landlord, and Landlord may thereafter cause such property to be removed from the Leased Premises. The cost of removing and disposing of such property and repairing any damage to any of the Leased Premises caused by such removal shall be borne by Tenant. Landlord shall not in any manner or to any extent be obligated to reimburse Tenant for any property which becomes the property of Landlord as a result of such expiration or earlier termination.

a. Any holding over by Tenant of the Leased Premises after the expiration or earlier termination of the Term of this Lease or any extensions thereof, with the consent of Landlord, shall operate and be construed as tenancy from month to month only, at one hundred fifty percent (150%) of the Basic Rent reserved herein and upon the same terms and conditions as contained in this Lease (except that Tenant shall have no further right or option to renew or

extend the Term). Notwithstanding the foregoing, any holding over without Landlord's consent shall entitle Landlord, in addition to collecting Basic Rent at a rate of one hundred fifty percent (150%) thereof, to exercise all rights and remedies provided by law or in equity, including the remedies of Paragraph 19(b).

24. No Merger of Title. There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of any of the Leased Premises by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or an interest in this Lease or in such leasehold estate and (b) the fee estate or ownership of any of the Leased Premises or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease and (ii) the fee estate in or ownership of the Leased Premises or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

25. Definition of Landlord.

a. Anything contained herein to the contrary notwithstanding, any claim based on or in respect of any liability of Landlord under this Lease shall be enforced only against the Landlord's interest in the Leased Premises and shall not be enforced against the Landlord individually or personally (except to the extent that it is necessary to name Landlord as a defendant in an action for equitable relief).

b. The term "LANDLORD" as used in this Lease so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the fee owner or owners of the Leased Premises at the time in question, and in the event of any transfer or transfers of the title of the Leased Premises, the Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer and conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed.

26. Environmental Covenants and Indemnity.

a. Except as set forth in the second sentence of this Paragraph 26(a), Tenant hereby represents, warrants, covenants and agrees to and with Landlord and the Lender that all conditions, operations or activities upon, or any uses or occupancy of, the Leased Premises have been, are presently and will be at all times through the term hereof and any Renewal Term(s) in compliance with all Environmental Laws; that no person at any time has engaged in or permitted, and no person will engage in or permit the occurrence or existence of any Hazardous Condition on or about the Leased Premises; and that there does not now exist nor is there suspected to exist any Hazardous Condition on or about the Leased Premises. Tenant discloses to Landlord that Tenant does or intends to use in Tenant's business certain modest amounts of janitorial and maintenance supplies that may be considered Hazardous Substances, and Landlord acknowledges Tenant's right to do so, provided, however, that any such storage or use of such products or substances shall at all times be in compliance with all Environmental Laws and shall not result in any release of any Hazardous Substances to the environment or to any location where it may reach the environment. If any past, present or future condition, occurrence, operation or activity at or about or off the Leased Premises (i) causes the Leased Premises to become subject to any Environmental Law, (ii) constitutes or causes the release or threatened release of any Hazardous Substance from the Leased Premises into the environment or to any location where it may reach the environment, (iii) causes the discharge into any water source or system or the air of any Hazardous Substance which would require a permit under any Environmental Laws or which would otherwise be a violation of any Environmental Laws, or (iv) creates a Hazardous Condition on the Leased Premises or elsewhere, Tenant will promptly notify Landlord and Lender, if any, in writing of such condition, occurrence, operation or activity, and promptly provide written notice of any claim made in respect thereof. If Tenant discovers that any Hazardous Condition exists on the Leased Premises or elsewhere, Tenant shall promptly notify Landlord and Lender of such condition in writing, and shall promptly and with all due diligence, take all remedial, removal and other actions necessary to remediate, remove,

contain or clean up such Hazardous Condition in compliance with all Legal

Requirements and with provisions of this Paragraph 26.

b. In the event that any Remedial Action with respect to any Hazardous Conditions is required under any Environmental Laws, by any judicial order, or by any governmental entity, or in order to comply with the terms, covenants and conditions of this Lease or of any other agreements affecting the Leased Premises, Tenant will promptly perform or cause to be performed the Remedial Action in compliance with such law, regulation, order the terms of this Lease or other agreement. The Remedial Action will be deemed to be complete when the presence of any and all Hazardous Conditions have been eliminated or, where complete elimination is not possible or practicable, when such Remedial Action has been undertaken that meets the approval of Landlord in its sole discretion. All Remedial Action (other than payment of money) will be performed by one or more contractors, selected by Tenant with Landlord's right of approval, not to be unreasonably withheld, and under the supervision of a consulting environmental engineer selected by Tenant with Landlord's right of approval, not to be unreasonably withheld. All costs and expenses of such Remedial Action will be paid by Tenant, including without limitation the charges of such contractor(s) and the consulting environmental engineer, and Landlord's and Lender's reasonable attorneys' and consultants' fees and other costs incurred in connection with monitoring or review of such Remedial Action. All proposed Remedial Action work will be submitted to Landlord for its prior approval, not to be unreasonably withheld. Tenant shall promptly provide Landlord with all written communication and documentation received or created by Tenant or on its behalf respecting the Remedial Action, including without limitation, reports, orders, data, workplans, and agency correspondence. If Tenant fails to timely commence, or cause to be commenced, or fails to diligently prosecute to completion, such Remedial Action, Landlord or Lender may, but will not be required or have any obligation hereunder to, cause such Remedial Action to be performed, and all costs and expenses thereof, or incurred in connection therewith, will thereupon constitute Environmental Claims. All such Environmental Claims will be due and payable by Tenant upon demand therefor by Landlord or Lender.

c. TENANT FURTHER AGREES TO PROTECT, INDEMNIFY, SAVE HARMLESS AND DEFEND (USING COUNSEL SATISFACTORY TO LANDLORD, OR LANDLORD MAY ELECT TO DEFEND ITSELF AT TENANT'S EXPENSE) LANDLORD AND LENDER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS AGENTS AND EMPLOYEES, IF ANY, FROM AND AGAINST ALL LIABILITIES, OBLIGATIONS, CLAIMS, DAMAGES, PENALTIES, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES) ARISING OUT OF OR RELATED IN ANY WAY TO (X) THE EXISTENCE OF HAZARDOUS SUBSTANCES OR HAZARDOUS CONDITIONS ON OR ABOUT THE LEASED PREMISES (OR ELSEWHERE) AND (Y) ANY ACTION OR OMISSION OF TENANT, ITS AGENTS OR EMPLOYEES, WHICH CONSTITUTES A VIOLATION OR ALLEGED VIOLATION OF ANY ENVIRONMENTAL LAW; provided, however, that the foregoing indemnification shall not be deemed to include claims, actions, penalties, costs, liabilities or expenses that arise from (i) any Hazardous Condition solely to the extent that it is determined by proper judicial or administrative procedure to have been introduced by Landlord or Lender to the Leased Premises

during any period while Landlord or Lender is in possession of the Leased Premises to the exclusion of Tenant after an Event of Default has occurred or after expiration of the Term or earlier termination of this Lease, or (ii) solely as to Tenant's indemnification of Landlord (and with no effect whatsoever on the indemnification of Lender) as provided above, any Hazardous Condition solely to the extent that it is determined by proper judicial or administrative procedure to have been introduced to the Leased Premises by Landlord during the Term.

d. Notwithstanding any provision of this Lease to the contrary, if Tenant wishes to contest or cause to be contested, the application, interpretation or validity of any Environmental Laws or any agreement requiring any Remedial Action, it may do so only in strict compliance with the provisions of Paragraph 18 hereof and, in addition, prior to any delay in full compliance with any Environmental Laws or any Remedial Action requirement on the basis of a good faith contest of such requirement, Tenant will have taken such steps as may be necessary to prevent or, with Landlord's prior written consent, mitigate any continuing occurrence, migration or exacerbation of any existing or suspected Hazardous Condition giving rise to the contested Remedial Action requirement or Environmental Law compliance.

e. The foregoing provisions are in addition to and not in limitation of any other indemnification obligations of Tenant under this Lease and shall survive the expiration or earlier termination of this Lease.

f. Tenant will not install any underground storage tank at the Leased Premises without specific, prior written approval from the Landlord. Tenant will not store combustible or flammable materials on the Leased Premises in violation of any Legal Requirements.

27. Entry by Landlord. Landlord and its authorized representatives shall have the right upon reasonable notice (which shall be not less than two (2) business days except in the case of emergency) to enter the Leased Premises at all reasonable business hours (and at all other times in the event of an emergency): (a) for the purpose of inspecting the same or for the purpose of doing any work under Paragraph 11 (c), and may take all such action thereon as may be necessary or appropriate for any such purpose (but nothing contained in this Lease or otherwise shall create or imply any duty upon the part of Landlord to make any such inspection or do any such work), and (b) for the purpose of showing the Leased Premises to prospective purchasers and mortgagees and, at any time within six (6) months prior to the expiration of the Term of this Lease for the purpose of showing the same to prospective tenants. No such entry shall constitute an eviction of Tenant but any such entry shall be done by Landlord in such reasonable manner as to minimize to the extent reasonably achievable any disruption of Tenant's business operation.

28. No Usury. The intention of the parties being to conform strictly to the applicable usury laws, whenever any provision herein provides for payment by Tenant to Landlord of interest at a rate in excess of the legal rate permitted to be charged, such rate herein provided to be paid shall be deemed reduced to such legal rate.

29. Separability.

Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement, and the breach of any such covenant or agreement by Landlord shall not discharge or relieve Tenant from its obligation to perform any of Tenant's covenants and agreements under this Lease. If any term or provision of this Lease or the application thereof to any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

30. Miscellaneous.

a. The paragraph headings in this Lease and the Table of Contents preceding this Lease are used only for convenience in finding the subject matters and are not part of this Lease or to be used in determining the intent of the parties or otherwise interpreting this Lease.

b. As used in this Lease the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (i) "including," shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, agreements, covenants and/or conditions"; (iii) "lien" shall mean "lien, charge, encumbrance, title retention agreement, pledge, security interest, mortgage and/or deed of trust"; and (iv) "obligation" shall mean "obligation, duty, agreement, liability, covenant or condition".

c. Any act which Landlord is permitted to perform under this Lease may be performed at any time and from time to time by Landlord or any person or entity designated by Landlord. Any act which Tenant is required to perform under this Lease shall be performed at Tenant's sole cost and expense.

d. This Lease may be modified, amended, discharged or waived only by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

e. The covenants of this Lease shall run with the Land and bind Tenant and all successors and assigns of Tenant, and shall inure to the benefit of and bind Landlord, its successors and assigns.

f. This Lease may be simultaneously executed in several counterparts, each of which when so executed and delivered shall constitute an original, fully enforceable counterpart for all purposes.

g. This Lease shall be governed by and construed according to the

laws of the State.

h. All Exhibits attached to this Lease are by reference incorporated into and form a part of this Lease.

i. Wherever the consent or approval of Landlord is required hereunder, Landlord agrees that it will not unreasonably withhold or delay such consent or approval, unless otherwise expressly stated herein.

31. Additional Rent. The term "ADDITIONAL RENT" as used herein includes all amounts, costs, expenses, liabilities and obligations (including but not limited to Tenant's obligation to pay any Net Awards or Purchase Price hereunder) which Tenant is required to pay pursuant to the terms of this Lease other than Basic Rent.

32. Note Default. Simultaneously with the execution of this Lease, Landlord, as maker, delivered to Tenant, as payee, that certain promissory note in the original principal amount of \$2,517,000 (the "PURCHASE MONEY Note"), as partial consideration for the sale of the Leased Premises to Landlord. Landlord expressly agrees that any default by Landlord, as maker, under any of the terms of the Purchase Money Note shall constitute a default by Landlord under this Lease.

33. Representations and Warranties. Tenant represents and warrants to Landlord that as of the Commencement Date the following statements are true and correct:

a. No adverse geological conditions exist at the Leased Premises, including, without limitation, any conditions regarding subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water and earthquake faults and the resulting damage of past earthquakes.

b. The Leased Premises or any portion thereof is not affected by any stream (surface or underground), body of water, flood prone area, flood plain, floodway or special flood hazard.

c. The Leased Premises and the use, occupancy and operation thereof complies with all applicable statutes, laws, orders, rules and regulations promulgated by any applicable governmental authorities and all matters of record including, without limitation, (a) Environmental Laws, (b) laws relating to health, safety, waste disposal, fire and environmental protection and (c) REAs, CC&Rs, zoning requirements and building codes. Tenant has received no notice of alleged violation of any such statute, order, rule, regulation or matter of record nor is there any reasonable basis therefor. Tenant has not received any communications: (i) from any insurance companies, governmental agencies or from any other parties regarding any alleged conditions, defects, or inadequacies with respect to the Leased Premises (including, without limitation, health hazards or dangers, nuisance or waste, which, if not corrected, would result in termination of insurance coverage or increase its cost), (ii) from governmental agencies or any other parties with respect to any violations of building codes, zoning ordinances, health codes or other laws, regulations, or orders; or (iii) from any person regarding pending, threatened or

contemplated condemnation proceedings with respect to the Leased Premises or anything that could or would cause the change, redefinition or other modification of the zoning classification, or of any building or environmental code requirements applicable to the Leased Premises or any part thereof. No pending, threatened or contemplated litigation exists regarding the Leased Premises.

d. No underground storage tanks are located in, on, under or beneath the Leased Premises and no underground storage tanks have previously been present at or removed from the Leased Premises.

e. No adverse soil conditions, including but not limited to the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the insufficiency of any undershoring exist at the Leased Premises;

f. No plan, study or effort by any governmental authority or agency or any non-governmental person or entity exists that in any way affects or would affect the present zoning of the Leased Premises or the use of the Leased Premises as presently permitted by such zoning designation.

g. All water, sewer, gas, electric, telephone, internet, cable television and drainage facilities and all other utilities required by law or by the normal operation of the Leased Premises are installed across public Leased Premises or valid easements to the Leased Premises lines of the Leased Premises, are all connected with valid permits, and are adequate to service the Leased Premises and to permit full compliance with all Legal Requirements, and all connection fees have been paid.

h. Tenant has obtained all licenses, permits, easements, and rights-of-way, including proof of dedication, required from all governmental authorities having jurisdiction over the Leased Premises or from private parties to permit the present use, occupation and operation of the Leased Premises and to ensure vehicular and pedestrian ingress and egress to the Leased Premises from public roads at all access points currently being used.

i. The Improvements have been completed and constructed in a good and workmanlike manner, and in compliance with all Legal Requirements. The Improvements are free from defects in design, materials and workmanship. All mechanical, plumbing, electrical, and HVAC systems are in good working order. The Leased Premises is free of any mechanics and materialmen's liens or the right of any person to these types of liens regardless of how those rights arise.

j. The Leased Premises are merchantable and fit for the Permitted Use.

k. None of the following exist within the boundaries of the Leased Premises: (i) sites of historic, archeological or religious significance; or (ii) endangered species (as defined by federal state or local laws). The Leased Premises is not within a "Flood Zone."

l. None of the easements, interests, covenants, conditions, restrictions or agreements to which the Leased Premises is or may be subject has interfered with, or has been breached by or as a result of, the current use or operation of the Leased Premises.

m. With respect to the current use of the Leased Premises, the number of automobile parking spaces existing on the Leased Premises is sufficient to comply with all applicable statutes, ordinances, codes and orders of all public authorities having or claiming jurisdiction thereover.

n. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to the best of Tenant's knowledge, threatened against Tenant or Guarantor nor are any of such proceedings contemplated by Tenant or Guarantor.

Failure of any of Tenant's foregoing representations or warranties to be true and correct shall not be a default under this Lease, but Tenant hereby covenants to Landlord that, within 10 days following written notice from Landlord to the effect that one or more of the foregoing representations and warranties is not true and correct, Tenant will take and diligently pursue to completion such action as is required or desirable to make such representations or warranties true as of the date such remedial action is complete. The representations and warranties in this Section 33 shall survive until the later of: (i) the end of the Initial Term; (ii) the end of Renewal Terms (if any). Nothing in the Section 33 shall serve to limit any of Tenant's duties or obligations or any of Landlord's rights or remedies under any other provision of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have caused this instrument to be executed under seal as of the day and year first above written.

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LANDLORD:

LANDFAIR, LLC,
a California limited liability company

By: /s/ Wayne Kao

Name: Wayne Kao

Title: President

TENANT:

DAVE & BUSTER'S I, L.P.,
a Texas limited partnership

By: Dave & Buster's, Inc., a
Missouri corporation, general partner

By: /s/ John S. Davis

Name: John S. Davis

Title: Vice President

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

All that tract or parcel of land lying and being in Land Lots 785 and 786 of the 17th District, 2nd Section, Cobb County, Georgia, and being more particularly described as follows:

Commencing at a 5/8" rebar and cap located at the Southwesterly mitered corner of the intersection of the Easterly right-of-way line of Northwest Parkway (having a 70 foot right-of-way) and the Southerly right-of-way line of Dave and Buster's Drive (having a 70 foot easement right-of-way); Thence along the Southerly easement right-of-way line of Dave and Buster's Drive, North 44 degrees 33 minutes 01 seconds East, a distance of 21.29 feet to a 5/8" rebar and cap found; Thence North 89 degrees 51 minutes 14 seconds East, a distance of 149.76 feet to a 5/8" rebar and cap found, said point being the TRUE POINT OF BEGINNING; Thence leaving said easement right-of-way line, North 00 degrees 02 minutes 52 seconds West, a distance of 149.61 feet to a -1/2" rebar and cap found; Thence North 59 degrees 26 minutes 19 seconds East, a distance of 538.66 feet to a 5/8" rebar found on the Westerly right-of-way line of Interstate Highway No. 75, (having a variable right-of-way), Thence along said right-of-way line, South 24 degrees 24 minutes 14 seconds East, a distance of 504.67 feet to a 5/8" rebar set; Thence South 24 degrees 21 minutes 33 seconds East, a distance of 119.68 feet to a 1/2" rebar and cap found; Thence leaving said right-of-way line, South 71 degrees 10 minutes 56 seconds West, a distance of 50.11 feet to a 1/2" rebar and cap found; Thence South 69 degrees 19 minutes 02 seconds West, a distance of 49.97 feet to a 1/2" rebar and cap found; Thence South 62 degrees 11 minutes 32 seconds West, a distance of 50.03 feet to a 1/2" rebar and cap found; Thence South 46 degrees 56 minutes 25 seconds West, a distance of 50.00 feet to a 1/2" rebar and cap found; Thence South 41 degrees 22 minutes 14 seconds West, a distance of 49.98 feet to a 1/2" rebar and cap found; Thence South 42 degrees 36 minutes 12 seconds West, a distance of 48.91 feet to 1/2" rebar and cap found; Thence South 43 degrees 14 minutes 28 seconds West, a distance of 50.98 feet to a 1/2" rebar and cap found; Thence South 53 Degrees 00 minutes 01 seconds West, a distance of 13.01 feet to a 5/8" rebar and cap found; Thence North 33 degrees 06 minutes 26 seconds West, a distance of 417.96 feet to a 5/8" rebar set; Thence South 89 degrees 52 minutes 47 seconds West, a distance of 206.86 feet to a -1/2" open top pipe found; Thence North 00 degrees 02 minutes 52 seconds West, a distance of 5.20 feet to a 5/8" rebar and cap found, said point being the TRUE POINT OF BEGINNING.

Said tract of land contains 6.331 Acres.

EXHIBIT B

Primary Initial Term: Twenty (20) years

Number of Consecutive Renewal Terms: Four (4) (subject to Paragraph 5c)

Duration of each Renewal Term: Five (5) years

1. Basic Rent from the Commencement Date through the first anniversary of the Commencement Date shall be \$1,012,200.00, payable in monthly installments of \$84,333.34 each.

2. Base Rent shall increase annually on each anniversary of the Commencement Date by 1.35%, through and including any Renewal Terms.

EXHIBIT C

Casualty and Condemnation Purchase Price

\$6,500,000

EXHIBIT D

Guaranty

EXHIBIT E

Equipment

N/A

EXHIBIT F

Trade Fixtures

N/A

EXECUTIVE RETENTION AGREEMENT

AGREEMENT by and between Dave & Buster's, Inc. (the "COMPANY"), and John S. Davis (the "EXECUTIVE"), dated as of the 7th day of June, 2001.

The Compensation Committee of the Company, (the "COMMITTEE"), has determined that it is in the best interests of the Company and its owners to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined in Section 2) of Dave & Buster's, Inc. (the "CORPORATION"). The Committee believes it is imperative to minimize distraction of the Executive resulting from personal uncertainties and risks created by a pending or threatened Change of Control, to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control that satisfy the compensation and benefits expectations of the Executive and are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Committee has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Certain Definitions.

(a) The "EFFECTIVE DATE" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated by the Company within ninety (90) days prior to the date on which the Change of Control occurs, then for all purposes of this Agreement the "EFFECTIVE DATE" shall mean the date immediately prior to the date of such termination of employment.

(b) The "CHANGE OF CONTROL PERIOD" shall mean the period commencing on the date hereof and ending on the third anniversary of such date; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the "RENEWAL DATE"), the Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. Control. For the purpose of this Agreement, a "CHANGE OF CONTROL" shall mean:

(a) Acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the

"EXCHANGE ACT")) (a "PERSON") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 30% or more of either (i) the then outstanding shares of common stock of the Corporation (the "OUTSTANDING COMMON STOCK") or (ii) the combined voting power of the then outstanding voting securities of the Corporation entitled to vote generally in the election of its directors (the "OUTSTANDING VOTING SECURITIES"); provided, however, that the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Corporation (excluding an acquisition by virtue of the exercise of a conversion privilege), (ii) any acquisition by the Corporation, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Corporation or any corporation controlled by the Corporation or (iv) any acquisition by any corporation pursuant to a reorganization, merger or consolidation, if, following such reorganization, merger or consolidation, the conditions described in clauses (i), (ii) and (iii) of subsection (c) of this Section 2 are satisfied; or

(b) Individuals who, as of the date hereof, constitute the Board of Directors of the Corporation (the "INCUMBENT BOARD") cease for any reason to constitute at least a majority of the Board of Directors said Corporation (the "BOARD"); provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Corporation's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14.A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Approval by the shareholders of the Corporation of a reorganization, merger or consolidation, in each case, unless, following such reorganization, merger or consolidation, (i) more than 50% of the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and more than 50% of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such reorganization, merger or consolidation in substantially the same proportions as their ownership immediately prior to such reorganization, merger or consolidation, of the Outstanding Common Stock and Outstanding Voting Securities, as the case may be; (ii) no Person (excluding the Corporation, any employee benefit plan (or related trust) of the Corporation or such corporation resulting from such reorganization, merger or consolidation and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 30% or more of

Executive Retention Agreement

Page 2

the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors; and (iii) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation; or

(d) Approval by the shareholders of the Corporation of (i) a complete liquidation or dissolution of the Corporation or (ii) the sale or other disposition of all or substantially all of the assets of the Corporation, other than to a corporation with respect to which, following such sale or other disposition, (A) more than 50% of the then outstanding shares of common stock of such corporation and more than 50% of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such sale or other disposition in substantially the same proportion as their ownership immediately prior to such sale or other disposition of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be; (B) no Person (excluding the Corporation and any employee benefit plan (or related trust) of the Corporation or such corporation and any Person beneficially owning, immediately prior to such sale or other disposition, directly or indirectly, 30% or more of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 30% or more of the then outstanding shares of common stock of such corporation or 30% or more of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors; and (C) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such sale or other disposition of assets of the Corporation.

A "Change of Control" will not include any transaction otherwise covered by

subsections (a) through (d) above in which beneficial ownership of the Outstanding Common Stock is acquired by, or the Corporation is merged or consolidated with an affiliate of, a "group" (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) in which David O. Corriveau and James W. Corley are named participants in a Form 13E-3 (or any successor form) filed with the Securities and Exchange Commission and remain as executive officers and directors of the Corporation or its successor after the completion of such transaction.

3. Employment Period. The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company, in accordance with the terms and provisions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of such date (the "EMPLOYMENT PERIOD"). Employment by one or more of the affiliated companies, as hereinafter defined, shall be considered employment by the Company.

4. Terms of Employment.

(a) Position and Duties.

(i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be consistent in all material respects with the most significant of those held, exercised or assigned at any time during the 90-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office that is the headquarters of the Company and is less than 25 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities to the Company. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not hereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) Compensation.

(i) Base Salary. During the Employment period, the Executive shall receive an annual base salary ("ANNUAL BASE SALARY"), which shall be paid in equal installments on a monthly basis, at least equal to twelve times the highest monthly base salary paid or payable to the Executive by the Company and its affiliated companies during the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed at least annually and shall be increased at any time and from time to time as shall be substantially consistent with increases in base salary generally awarded in the ordinary course of business to other peer executives of the Company and its affiliated companies. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "AFFILIATED COMPANIES" shall include any company controlled by, controlling or under common control with the Company.

(ii) Annual Bonus. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the "ANNUAL BONUS") in cash at least equal to the greater of: (a) the maximum bonus that the Executive could have been paid pursuant to the executive incentive bonus plan in effect ninety (90) days prior to the Effective Date and (b) sixty percent (60%) of the Annual Base Salary then in effect. Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus.

(iii) Incentive, Savings and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its affiliated companies. Such plans, practices, policies and programs shall provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, if any), savings opportunities and retirement benefit opportunities, in each case, as favorable as the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) Welfare Benefit Plans. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies. Such plans, practices, policies and programs shall provide the Executive with benefits that are, in each case, as favorable, as the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable employment expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vi) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date, or if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company or its affiliated companies at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its

affiliated companies as in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

5. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 12(b) of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "DISABILITY EFFECTIVE DATE"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "DISABILITY" shall mean the absence of the Executive from the Executive's full-time duties with the Company for 180 consecutive calendar days as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative (such agreement as to acceptability not to be withheld unreasonably).

(b) Cause. The Company may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Agreement, "CAUSE" shall be determined by the Committee in exercise of good faith and reasonable judgment and shall mean (i) a material violation of Company policy or a material breach by the Executive of the

Executive Retention Agreement Page 6

Executive's obligations under Section 4(a) (other than as a result of incapacity due to physical or mental illness) that is demonstrably willful and deliberate on the Executive's part, committed in bad faith or without reasonable belief that the action or inaction that constitutes such breach is in the best interests of the Company, and, if subject to being effectively remedied, is not remedied in a reasonable period of time after receipt of written notice from the Company specifying such breach or violation ("NOTE OF BREACH"); or (ii) the conviction of the Executive of a felony involving moral turpitude.

If Company delivers a Notice of Breach to Executive describing the situation to be remedied and Executive fails to remedy such violation or breach within a reasonable period of time (as determined in the Notice of Breach), a Notice of Termination delivered to the Executive subsequent to the Notice of Breach shall become effective retroactively back to the date of delivery of the Notice of Breach to the Executive.

(c) Good Reason. The Executive's employment may be terminated during the Employment Period by the Executive for Good Reason. For purposes of this Agreement, "GOOD REASON" shall mean, without the Executive's express written consent, the occurrence of any one or more of the following:

(i) the assignment to the Executive of any duties, authority or responsibilities materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities with the most significant of those held, exercised or assigned at any time during the 90-day period immediately preceding the Effective Date (excluding those duties that are only for the purpose of effecting the Change of Control) or any other action by the Company that results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated action that is insubstantial or inadvertent and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b), other than an isolated failure that is insubstantial or inadvertent failure and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than that described in Section 4(a)(i)(B);

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement;

(v) any failure by the Company to obtain a satisfactory agreement from any successor to the Company to assume and agree to perform the Company's obligations under this Agreement, as contemplated in Section 11(c) herein;

(vi) the Company requiring the Executive to engage in excessive travel in comparison to travel required during the 90-day period immediately preceding the Effective Date; or

Executive Retention Agreement

Page 7

(vii) a substantial change in organizational reporting relationships as compared to the 90-day period immediately preceding the Effective Date that will have a significant impact on the status, offices, titles and reporting requirements of the Executive.

The Executive's continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b). For purposes of this Agreement, a "NOTICE OF TERMINATION" means a written notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date of such notice. The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance that supports a showing of Good Reason or Cause shall not waive any right of the Executive or the Company hereunder or preclude the Executive or the Company from later asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder. The Company may not terminate the Executive's employment for Cause after the Executive has delivered a Notice of Termination for Good Reason; nor may the Executive terminate employment with Company for Good Reason after Company has delivered a Notice of Termination to the Executive.

(e) Date of Termination. "DATE OF TERMINATION" means (i) if the Executive's employment is terminated by the Company for Cause or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be; (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the date on which the Company notifies the Executive of such termination; and (iii) if the Executive's employment is terminated by reason of death or Disability, the date of death of the Executive or the Disability Effective Date, as the case may be.

6. Obligations of the Company upon Termination.

(a) Good Reason; Other than for Cause, Death or Disability. If, during the Employment Period, the Company shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) The Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

Executive Retention Agreement

Page 8

A. The sum of (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (3) any compensation previously deferred

by the Executive (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (1), (2) and (3) shall be hereinafter referred to as the "ACCRUED OBLIGATIONS"); and

B. The amount (such amount shall be hereinafter referred to as the "SEVERANCE AMOUNT") equal to two (2) times the sum of (x) the Executive's Annual Base Salary and (y) the Annual Bonus; provided, however, that such amount shall be reduced by the present value (determined as provided in Section 280G(d)(4) of the Internal Revenue Code of 1986, as amended (the "CODE")) of any other amount of severance relating to salary or bonus continuation to be received by the Executive upon termination of employment of the Executive under any severance plan, policy or arrangement of the Company; and

C. A separate lump-sum supplemental retirement benefit (the amount of such benefit shall be hereinafter referred to as the "SUPPLEMENTAL RETIREMENT AMOUNT") equal to the difference between (1) the amount payable under any Company retirement plan (or any successor plan thereto) (the "RETIREMENT PLAN"), of which the Executive was a participant, and any supplemental and/or excess retirement plan of the Company and its affiliated companies providing benefits for the Executive (the "SERP") that the Executive would receive if the Executive's employment continued at the compensation level provided for in Sections 4(b)(i) and 4(b)(ii) for the remainder of the Employment Period plus two (2) years, assuming for this purpose that all accrued benefits are fully vested, and (2) the Executive's actual benefit (paid or payable), if any, under the Retirement Plan and the SERP; and

(ii) For the remainder of the Employment Period plus two (2) years, or such longer period as any plan, program, practice or policy may provide, the Company shall continue benefits (or pay the pre-tax economic equivalent) to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Sections 4(b)(v) and 4(b)(vii) if the Executive's employment had not been terminated in accordance with the most favorable plans, practices, programs or policies of the Company and its affiliated companies as in effect and applicable generally to other peer executives and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families, provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility (such continuation of such benefits for the applicable period

Executive Retention Agreement

Page 9

herein set forth shall be hereinafter referred to as "WELFARE BENEFIT CONTINUATION". For purposes of determining eligibility of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed until the end of the Employment Period and to have retired on the last day of such period; and

(iii) To the extent not theretofore paid or provided, for the remainder of the Employment Period plus two (2) years, or such longer period as any plan, program, practice or policy may provide, the Company shall timely pay or provide to the Executive and/or the Executive's family any other amounts or benefits (or the pre-tax economic equivalent) required to be paid or provided or which the Executive and/or the Executive's family is eligible to receive pursuant to this Agreement and under any plan, program, policy or practice or contract or agreement of the Company and its affiliated companies as in effect and applicable generally to other peer executives of the Company and its affiliated companies and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally thereafter with respect to other peer executives of the Company and its affiliated companies and their families (such other amounts and benefits shall be hereinafter referred to as the "OTHER BENEFITS").

(b) Death. If the Executive's employment is terminated by reason of the Executive's death during, the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for (i) payment of Accrued

Obligations (which shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination) and the timely payment or provision of the Welfare Benefit Continuation and Other Benefits (excluding, in each case, Death Benefits (as defined below)) and (ii) payment to the Executive's estate or beneficiary, as applicable, in a lump-sum in cash within 30 days of the Date of Termination of an amount equal to (A) the sum of the Severance Amount and the Supplemental Retirement Amount reduced, but not below zero, by (B) the present value (determined as provided in Section 280G(d)(4) of the Code) of any cash amount to be received by the Executive or the Executive's family as a death benefit pursuant to the terms of any plan, policy or arrangement of the Company and its affiliated companies, but not including any proceeds of life insurance covering the Executive to the extent paid for directly or on a contributory basis by the Executive (which shall be paid in any event as an Other Benefit) (the benefits included in this clause (B) shall be hereinafter referred to as the "DEATH BENEFITS").

(c) Disability. If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for (i) payment of Accrued Obligations (which shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination) and the timely payment of provision of the Welfare Benefit Continuation and Other Benefits (excluding, in each case, Disability Benefits, as defined below) and (ii) payment to the Executive in a lump sum in cash within 30 days of the Date of Termination of an amount equal to (A) the sum of the Severance Amount and the Supplemental Retirement Amount reduced, but not below zero, by (B) the present value (determined as provided in Section 280G(d)(4) of

Executive Retention Agreement Page 10

the Code) of any cash amount to be received by the Executive as a disability benefit pursuant to the terms of any plan, policy or arrangement of the Company and its affiliated companies, but not including any proceeds of disability insurance covering the Executive to the extent paid for directly or on a contributory basis by the Executive (which shall be paid in any event as an Other Benefit) (the benefits included in this clause (B) shall be hereinafter referred to as the "DISABILITY BENEFITS").

(d) Cause; Other than for Good Reason. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive Annual Base Salary through the Date of Termination plus the amount of any compensation previously deferred by the Executive, in each case to the extent theretofore unpaid. If the Executive terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

7. Non-exclusivity of Rights. Except as provided in Sections 6(a)(ii), 6(b) and 6(c), nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts that are vested benefits or that the Executive is otherwise entitled to receive under any plan, policy, practice or program or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

8. Full Settlement; Resolution of Disputes.

(a) The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and, except as provided in Section

6(a)(ii), such amounts shall not be reduced if the Executive obtains other employment.

(b) Parties recognize that there may be disputes between them as to whether the circumstances of the Executive's termination are covered by Section 6(a), (b) or (c) as the Executive and/or the Executive's family may contend or are covered by Section 6(d) as Company may contend. In the event of such a dispute, there may be a need for a binding ruling by a neutral decision maker. In such an event, the following shall apply:

Executive Retention Agreement

Page 11

(i) If the Executive delivers a Notice of Termination to Company based on Section 6(a), (b) or (c), Company must pay the benefits provided in Section 6 unless Company commences arbitration to resolve the dispute within 30 days of the receipt of a Notice of Termination by the Executive. Failure to commence arbitration within the time stated is deemed an admission by Company of the Executive's reason for termination.

(ii) If Company delivers a Notice of Termination based on Section 6(d), Executive and/or Executive's family must commence arbitration to dispute the terms of such termination. Failure to commence arbitration within 60 days of the receipt of a Notice of Termination from Company is deemed an admission by the Executive of termination pursuant to Section 6(d).

(iii) Arbitration shall be conducted before a panel of three (3) arbitrators sitting in a location selected by the Executive within fifty (50) miles from the location of his job with the Company, in accordance with the rules of the American Arbitration Association then in effect. One arbitrator shall be selected by the Company. One arbitrator shall be selected by the Executive. The third arbitrator shall be selected by the two arbitrators selected by the Company and the Executive. Judgment may be entered on the award of the arbitrators in any court having proper jurisdiction, and such shall constitute the final, nonappealable decision.

(iv) Company agrees to pay promptly as incurred, to the full extent permitted by law, all legal fees and expenses that the Executive may reasonably incur as a result of any contest by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), including all costs of arbitration, plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Code.

(v) During the pendency of a dispute resolution, Company shall proceed to pay Annual Base Salary and Annual Bonus (referred to collectively as "CONTINUATION BENEFITS") to the Executive and/or the Executive's family or other beneficiaries, as the case may be, as though no such termination had occurred.

(A) If it is determined that the Executive's contention that Section 6(a), (b) or (c) was applicable, no portion of the Continuation Benefits will be recoverable by Company, nor shall any portion of such be credited towards the benefits due (per Section 6) to the Executive. If such a contention is not sustained by the arbitration panel, all Continuation Benefits are recoverable by Company, plus interest at the rate of interest that Company could have earned on amounts paid for such Continuation Benefits.

Executive Retention Agreement

Page 12

(B) If it is determined that Company's contention that Section 6(d) was applicable is found to be incorrect, none of the Continuation Benefits shall be credited to the benefits due (per Section 6) to the Executive. If, however, Company's contention that Section 6(d) was applicable is found to be correct, all amounts paid by Company as Continuation Benefits shall be recoverable from Executive plus interest at the rate of interest that Company could have earned on the amounts paid for such Continuation Benefits.

(C) If the Executive does not make payment of the Continuation Benefits and accrued interest due to Company within 60 days

following the resolution of the dispute for any amounts recoverable by Company, interest (on the total amount due) shall be due at the lesser of:

- (1) The rate published as the Prime Rate in the Wall Street Journal plus one percentage point on the date of receipt of the Notice of Termination; or
- (2) The maximum amount of interest allowed by law.

(D) If the Company does not pay any amount due to the Executive hereunder within the time provided, then in addition to such amount, Company shall pay Executive an amount of interest (on the total amount due) at the lesser of:

- (1) The rate published as the Prime Rate in the Wall Street Journal plus one percentage point on the date such payment is due; or
- (2) The maximum amount of interest allowed by law.

9. Limitation on Termination Payment.

(a) Determination of Termination Payment Limit.

Notwithstanding any other provision of this Agreement, if any portion of the Severance Amount or any other payment under this Agreement, or under any other agreement with or plan of the Company (in the aggregate "TOTAL PAYMENTS") would constitute an Excess Parachute Payment, then the payments to be made to the Executive under this Agreement shall be reduced such that the value of the aggregate Total Payments that the Executive is entitled to receive shall be one dollar (\$1) less than the maximum amount which the Executive may receive without becoming subject to the tax imposed by Section 4999 of the Code, or which the Company may pay without loss of deduction under Section 280G(a) of the Code. However, the payments to be made to the Executive under this Agreement shall be reduced if and only if so reducing the payments results in the Executive receiving a greater net Severance Amount than he would have received had a reduction not occurred and an excise tax been paid pursuant to Code Section 4999. For purposes of this Agreement, the terms "EXCESS PARACHUTE PAYMENT" and "PARACHUTE PAYMENTS" shall have the meanings assigned to them in Section 280G of the Code, and such Parachute Payments shall be valued as provided therein.

(b) Procedure for Establishing Limitation on Termination Payment. Within sixty (60) days following delivery of the Notice of Termination or notice by the Company to the Executive of its belief that there is a payment or benefit due the Executive which will result in an "Excess Parachute Payment", the Executive and the Company, at the Company's expense, shall obtain the opinion of such legal counsel, which need not be unqualified, as the Executive may choose, which sets forth: (i) the amount of the Executive's "Annualized Includible Compensation For The Base Period" (as defined in Code Section 280G(d)(1)); (ii) the present value of the Total Payments; and (iii) the amount and present value of any Excess Parachute Payment. The opinion of such legal counsel may be supported by the opinion of a certified public accounting firm and, if necessary, a firm of recognized executive compensation consultants. Such opinion shall be binding upon the Company and the Executive. In the event that such opinion determines that there would be an Excess Parachute Payment, the Severance Amount hereunder or any other payment determined by such counsel to be includible in Total Payments shall be reduced or eliminated so that under the basis of calculations set forth in such opinion, there will be no Excess Parachute Payment. The provisions of this Section 9(b), including the calculations, notices, and opinion provided for herein shall be based upon the conclusive presumption that: (i) the compensation and benefits provided for herein; and (ii) any other compensation earned prior to the Effective Date of termination by the Executive pursuant to the Company's compensation programs (if such payments would have been made in the future in any event, even though the timing of such payment is triggered by the Change-of-Control), are reasonable.

(c) Subsequent Imposition of Excise Tax. If, notwithstanding compliance with the provisions of Sections 9(a), and 9(b) herein, it is ultimately determined by a court or pursuant to a final determination by the

Internal Revenue Service that any portion of the Total Payments is considered to be a Parachute Payment, subject to excise tax under Section 4999 of the Code, which was not contemplated to be a Parachute Payment at the time of payment (so as to accurately determine whether a limitation benefit to the Executive, as provided in Section 9(b) hereof), the Executive shall be entitled to receive a lump sum cash payment sufficient to place the Executive in the same net after-tax position, computed by using the Special Tax Rate (as such term is defined below), that the Executive would have been in had such payment not been subject to such excise tax, and had the Executive not incurred any interest charges or penalties with respect to the imposition of such excise tax. For purposes of this Agreement, the "SPECIAL TAX RATE" shall be the highest effective federal and state marginal tax rates applicable to the Executive in the year in which the payment contemplated under this Section 9 is made.

10. Confidential Information. The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or have become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

11. Successors.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "COMPANY" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid that assumes and agrees to perform this Agreement by operation of law, or otherwise.

(d) Failure of the Company to obtain such assumption and agreement prior to the effective date of any such succession shall be a breach of this Agreement and shall entitle the Executive to compensation from the Company in the same amount and on the same terms as the Executive would be entitled to hereunder if he had terminated his employment with the Company voluntarily for Good Reason. For the purpose of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

12. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

John S. Davis
2704 Westminster
Dallas, TX 75205

If to the Company:

Dave & Buster's, Inc.
2481 Manana Drive
Dallas, TX 75220
Attention: General Counsel

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state or local taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Section 5(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company prior to the Effective Date is "at will" and may be terminated by either the Executive or the Company at any time. If prior to the Effective Date, the Executive's employment with the Company terminates, the Executive shall have no further rights and obligations under this Agreement.

Executive Retention Agreement Page 16

(g) No provision of this Agreement may be modified, waived, or discharged unless such modification, waiver, or discharge is agreed to in writing and signed by the Executive and by an authorized member of the Committee, or by the respective parties' legal representatives and successors.

(h) The Company and Wachovia Bank of North Carolina, N.A., as Trustee have previously executed the Dave & Buster's, Inc. Executive Retention Agreement Trust dated April 3, 2000. The Company covenants with Executive to: (i) identify Executive as a Plan Participant thereunder by amending Attachment 1 thereto; and (ii) make all payments required of the Company pursuant to such agreement.

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Committee, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ John S. Davis

John S. Davis

Dave & Buster's, Inc.

By: /s/ David O. Corriveau

Its: President

EXECUTIVE RETENTION AGREEMENT

AGREEMENT by and between Dave & Buster's, Inc. (the "COMPANY"), and W. C. Hammett, Jr. (the "Executive"), dated as of the 3rd day of December, 2001.

The Compensation Committee of the Company, (the "COMMITTEE"), has determined that it is in the best interests of the Company and its owners to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined in Section 2) of Dave & Buster's, Inc. (the "CORPORATION"). The Committee believes it is imperative to minimize distraction of the Executive resulting from personal uncertainties and risks created by a pending or threatened Change of Control, to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control that satisfy the compensation and benefits expectations of the Executive and are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Committee has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Certain Definitions.

(a) The "EFFECTIVE DATE" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated by the Company within ninety (90) days prior to the date on which the Change of Control occurs, then for all purposes of this Agreement the "EFFECTIVE DATE" shall mean the date immediately prior to the date of such termination of employment.

(b) The "CHANGE OF CONTROL PERIOD" shall mean the period commencing on the date hereof and ending on the third anniversary of such date; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the "RENEWAL DATE"), the Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. Control. For the purpose of this Agreement, a "CHANGE OF CONTROL" shall mean:

(a) Acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the

Executive Retention Agreement

Page 1

"EXCHANGE ACT")) (a "PERSON") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 30% or more of either (i) the then outstanding shares of common stock of the Corporation (the "OUTSTANDING COMMON STOCK") or (ii) the combined voting power of the then outstanding voting securities of the Corporation entitled to vote generally in the election of its directors (the "OUTSTANDING VOTING SECURITIES"); provided, however, that the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Corporation (excluding an acquisition by virtue of the exercise of a conversion privilege), (ii) any acquisition by the Corporation, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Corporation or any corporation controlled by the Corporation or (iv) any acquisition by any corporation pursuant to a reorganization, merger or consolidation, if, following such reorganization, merger or consolidation, the conditions described in clauses (i), (ii) and (iii) of subsection (c) of this Section 2 are satisfied; or

(b) Individuals who, as of the date hereof, constitute the

Board of Directors of the Corporation (the "INCUMBENT BOARD") cease for any reason to constitute at least a majority of the Board of Directors said Corporation (the "BOARD"); provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Corporation's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14.A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Approval by the shareholders of the Corporation of a reorganization, merger or consolidation, in each case, unless, following such reorganization, merger or consolidation, (i) more than 50% of the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and more than 50% of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such reorganization, merger or consolidation in substantially the same proportions as their ownership immediately prior to such reorganization, merger or consolidation, of the Outstanding Common Stock and Outstanding Voting Securities, as the case may be; (ii) no Person (excluding the Corporation, any employee benefit plan (or related trust) of the Corporation or such corporation resulting from such reorganization, merger or consolidation and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 30% or more of the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of

Executive Retention Agreement

Page 2

the then outstanding voting securities of such corporation entitled to vote generally in the election of directors; and (iii) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation; or

(d) Approval by the shareholders of the Corporation of (i) a complete liquidation or dissolution of the Corporation or (ii) the sale or other disposition of all or substantially all of the assets of the Corporation, other than to a corporation with respect to which, following such sale or other disposition, (A) more than 50% of the then outstanding shares of common stock of such corporation and more than 50% of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such sale or other disposition in substantially the same proportion as their ownership immediately prior to such sale or other disposition of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be; (B) no Person (excluding the Corporation and any employee benefit plan (or related trust) of the Corporation or such corporation and any Person beneficially owning, immediately prior to such sale or other disposition, directly or indirectly, 30% or more of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 30% or more of the then outstanding shares of common stock of such corporation or 30% or more of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors; and (C) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such sale or other disposition of assets of the Corporation.

A "Change of Control" will not include any transaction otherwise covered by subsections (a) through (d) above in which beneficial ownership of the Outstanding Common Stock is acquired by, or the Corporation is merged or

consolidated with an affiliate of, a "group" (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) in which David O. Corriveau and James W. Corley are named participants in a Form 13E-3 (or any successor form) filed with the Securities and Exchange Commission and remain as executive officers and directors of the Corporation or its successor after the completion of such transaction.

3. Employment Period. The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company, in accordance with the terms and provisions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of such date (the "EMPLOYMENT PERIOD"). Employment by one or more of the affiliated companies, as hereinafter defined, shall be considered employment by the Company.

Executive Retention Agreement

Page 3

4. Terms of Employment.

(a) Position and Duties.

(i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be consistent in all material respects with the most significant of those held, exercised or assigned at any time during the 90-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office that is the headquarters of the Company and is less than 25 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities to the Company. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not hereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) Compensation.

(i) Base Salary. During the Employment period, the Executive shall receive an annual base salary ("ANNUAL BASE SALARY"), which shall be paid in equal installments on a monthly basis, at least equal to twelve times the highest monthly base salary paid or payable to the Executive by the Company and its affiliated companies during the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed at least annually and shall be increased at any time and from time to time as shall be substantially consistent with increases in base salary generally awarded in the ordinary course of business to other peer executives of the Company and its affiliated companies. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "AFFILIATED COMPANIES" shall include any company controlled by, controlling or under common control with the Company.

Executive Retention Agreement

Page 4

(ii) Annual Bonus. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment

Period, an annual bonus (the "ANNUAL BONUS") in cash at least equal to the greater of: (a) the maximum bonus that the Executive could have been paid pursuant to the executive incentive bonus plan in effect ninety (90) days prior to the Effective Date and (b) fifty percent (50%) of the Annual Base Salary then in effect. Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus.

(iii) Incentive, Savings and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its affiliated companies. Such plans, practices, policies and programs shall provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, if any), savings opportunities and retirement benefit opportunities, in each case, as favorable as the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) Welfare Benefit Plans. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies. Such plans, practices, policies and programs shall provide the Executive with benefits that are, in each case, as favorable, as the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable employment expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vi) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date, or if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company or its affiliated companies at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to

the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

5. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 12(b) of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "DISABILITY EFFECTIVE DATE"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "DISABILITY" shall mean the absence of the Executive from the Executive's full-time duties with the Company for 180 consecutive calendar days as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative (such agreement as to acceptability not to be withheld unreasonably).

(b) Cause. The Company may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Agreement, "CAUSE" shall be determined by the Committee in exercise of good faith and reasonable judgment and shall mean (i) a material violation of Company policy or a material breach by the Executive of the

Executive Retention Agreement

Page 6

Executive's obligations under Section 4(a) (other than as a result of incapacity due to physical or mental illness) that is demonstrably willful and deliberate on the Executive's part, committed in bad faith or without reasonable belief that the action or inaction that constitutes such breach is in the best interests of the Company, and, if subject to being effectively remedied, is not remedied in a reasonable period of time after receipt of written notice from the Company specifying such breach or violation ("NOTE OF BREACH"); or (ii) the conviction of the Executive of a felony involving moral turpitude.

If Company delivers a Notice of Breach to Executive describing the situation to be remedied and Executive fails to remedy such violation or breach within a reasonable period of time (as determined in the Notice of Breach), a Notice of Termination delivered to the Executive subsequent to the Notice of Breach shall become effective retroactively back to the date of delivery of the Notice of Breach to the Executive.

(c) Good Reason. The Executive's employment may be terminated during the Employment Period by the Executive for Good Reason. For purposes of this Agreement, "GOOD REASON" shall mean, without the Executive's express written consent, the occurrence of any one or more of the following:

(i) the assignment to the Executive of any duties, authority or responsibilities materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities with the most significant of those held, exercised or assigned at any time during the 90-day period immediately preceding the Effective Date (excluding those duties that are only for the purpose of effecting the Change of Control) or any other action by the Company that results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated action that is insubstantial or inadvertent and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b), other than an isolated failure that is insubstantial or inadvertent failure and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than that described in Section 4(a)(i)(B);

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement;

(v) any failure by the Company to obtain a satisfactory agreement from any successor to the Company to assume and agree to perform the Company's obligations under this Agreement, as contemplated in Section 11(c) herein;

(vi) the Company requiring the Executive to engage in excessive travel in comparison to travel required during the 90-day period immediately preceding the Effective Date; or

(vii) a substantial change in organizational reporting relationships as compared to the 90-day period immediately preceding the Effective Date that will have a significant impact on the status, offices, titles and reporting requirements of the Executive.

The Executive's continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b). For purposes of this Agreement, a "NOTICE OF TERMINATION" means a written notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date of such notice. The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance that supports a showing of Good Reason or Cause shall not waive any right of the Executive or the Company hereunder or preclude the Executive or the Company from later asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder. The Company may not terminate the Executive's employment for Cause after the Executive has delivered a Notice of Termination for Good Reason; nor may the Executive terminate employment with Company for Good Reason after Company has delivered a Notice of Termination to the Executive.

(e) Date of Termination. "DATE OF TERMINATION" means (i) if the Executive's employment is terminated by the Company for Cause or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be; (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the date on which the Company notifies the Executive of such termination; and (iii) if the Executive's employment is terminated by reason of death or Disability, the date of death of the Executive or the Disability Effective Date, as the case may be.

6. Obligations of the Company upon Termination.

(a) Good Reason; Other than for Cause, Death or Disability. If, during the Employment Period, the Company shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) The Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

A. The sum of (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (3) any compensation previously deferred by the Executive (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (1), (2) and (3) shall be hereinafter

referred to as the "ACCRUED OBLIGATIONS"); and

B. The amount (such amount shall be hereinafter referred to as the "SEVERANCE AMOUNT") equal to two (2) times the sum of (x) the Executive's Annual Base Salary and (y) the Annual Bonus; provided, however, that such amount shall be reduced by the present value (determined as provided in Section 280G(d)(4) of the Internal Revenue Code of 1986, as amended (the "CODE")) of any other amount of severance relating to salary or bonus continuation to be received by the Executive upon termination of employment of the Executive under any severance plan, policy or arrangement of the Company; and

C. A separate lump-sum supplemental retirement benefit (the amount of such benefit shall be hereinafter referred to as the "SUPPLEMENTAL RETIREMENT AMOUNT") equal to the difference between (1) the amount payable under any Company retirement plan (or any successor plan thereto) (the "RETIREMENT PLAN"), of which the Executive was a participant, and any supplemental and/or excess retirement plan of the Company and its affiliated companies providing benefits for the Executive (the "SERP") that the Executive would receive if the Executive's employment continued at the compensation level provided for in Sections 4(b)(i) and 4(b)(ii) for the remainder of the Employment Period plus two (2) years, assuming for this purpose that all accrued benefits are fully vested, and (2) the Executive's actual benefit (paid or payable), if any, under the Retirement Plan and the SERP; and

(ii) For the remainder of the Employment Period plus two (2) years, or such longer period as any plan, program, practice or policy may provide, the Company shall continue benefits (or pay the pre-tax economic equivalent) to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Sections 4(b)(v) and 4(b)(vii) if the Executive's employment had not been terminated in accordance with the most favorable plans, practices, programs or policies of the Company and its affiliated companies as in effect and applicable generally to other peer executives and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families, provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility (such continuation of such benefits for the applicable period

Executive Retention Agreement

Page 9

herein set forth shall be hereinafter referred to as "WELFARE BENEFIT CONTINUATION". For purposes of determining eligibility of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed until the end of the Employment Period and to have retired on the last day of such period; and

(iii) To the extent not theretofore paid or provided, for the remainder of the Employment Period plus two (2) years, or such longer period as any plan, program, practice or policy may provide, the Company shall timely pay or provide to the Executive and/or the Executive's family any other amounts or benefits (or the pre-tax economic equivalent) required to be paid or provided or which the Executive and/or the Executive's family is eligible to receive pursuant to this Agreement and under any plan, program, policy or practice or contract or agreement of the Company and its affiliated companies as in effect and applicable generally to other peer executives of the Company and its affiliated companies and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally thereafter with respect to other peer executives of the Company and its affiliated companies and their families (such other amounts and benefits shall be hereinafter referred to as the "OTHER BENEFITS").

(b) Death. If the Executive's employment is terminated by reason of the Executive's death during, the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for (i) payment of Accrued Obligations (which shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination) and the timely payment or provision of the Welfare Benefit Continuation and Other

Benefits (excluding, in each case, Death Benefits (as defined below)) and (ii) payment to the Executive's estate or beneficiary, as applicable, in a lump-sum in cash within 30 days of the Date of Termination of an amount equal to (A) the sum of the Severance Amount and the Supplemental Retirement Amount reduced, but not below zero, by (B) the present value (determined as provided in Section 280G(d)(4) of the Code) of any cash amount to be received by the Executive or the Executive's family as a death benefit pursuant to the terms of any plan, policy or arrangement of the Company and its affiliated companies, but not including any proceeds of life insurance covering the Executive to the extent paid for directly or on a contributory basis by the Executive (which shall be paid in any event as an Other Benefit) (the benefits included in this clause (B) shall be hereinafter referred to as the "DEATH BENEFITS").

(c) Disability. If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for (i) payment of Accrued Obligations (which shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination) and the timely payment of provision of the Welfare Benefit Continuation and Other Benefits (excluding, in each case, Disability Benefits, as defined below) and (ii) payment to the Executive in a lump sum in cash within 30 days of the Date of Termination of an amount equal to (A) the sum of the Severance Amount and the Supplemental Retirement Amount reduced, but not below zero, by (B) the present value (determined as provided in Section 280G(d)(4) of

Executive Retention Agreement Page 10

the Code) of any cash amount to be received by the Executive as a disability benefit pursuant to the terms of any plan, policy or arrangement of the Company and its affiliated companies, but not including any proceeds of disability insurance covering the Executive to the extent paid for directly or on a contributory basis by the Executive (which shall be paid in any event as an Other Benefit) (the benefits included in this clause (B) shall be hereinafter referred to as the "DISABILITY BENEFITS").

(d) Cause; Other than for Good Reason. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive Annual Base Salary through the Date of Termination plus the amount of any compensation previously deferred by the Executive, in each case to the extent theretofore unpaid. If the Executive terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

7. Non-exclusivity of Rights. Except as provided in Sections 6(a)(ii), 6(b) and 6(c), nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts that are vested benefits or that the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

8. Full Settlement; Resolution of Disputes.

(a) The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and, except as provided in Section 6(a)(ii), such amounts shall not be reduced if the Executive obtains other employment.

(b) Parties recognize that there may be disputes between them

as to whether the circumstances of the Executive's termination are covered by Section 6(a), (b) or (c) as the Executive and/or the Executive's family may contend or are covered by Section 6(d) as Company may contend. In the event of such a dispute, there may be a need for a binding ruling by a neutral decision maker. In such an event, the following shall apply:

Executive Retention Agreement

Page 11

(i) If the Executive delivers a Notice of Termination to Company based on Section 6(a), (b) or (c), Company must pay the benefits provided in Section 6 unless Company commences arbitration to resolve the dispute within 30 days of the receipt of a Notice of Termination by the Executive. Failure to commence arbitration within the time stated is deemed an admission by Company of the Executive's reason for termination.

(ii) If Company delivers a Notice of Termination based on Section 6(d), Executive and/or Executive's family must commence arbitration to dispute the terms of such termination. Failure to commence arbitration within 60 days of the receipt of a Notice of Termination from Company is deemed an admission by the Executive of termination pursuant to Section 6(d).

(iii) Arbitration shall be conducted before a panel of three (3) arbitrators sitting in a location selected by the Executive within fifty (50) miles from the location of his job with the Company, in accordance with the rules of the American Arbitration Association then in effect. One arbitrator shall be selected by the Company. One arbitrator shall be selected by the Executive. The third arbitrator shall be selected by the two arbitrators selected by the Company and the Executive. Judgment may be entered on the award of the arbitrators in any court having proper jurisdiction, and such shall constitute the final, nonappealable decision.

(iv) Company agrees to pay promptly as incurred, to the full extent permitted by law, all legal fees and expenses that the Executive may reasonably incur as a result of any contest by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), including all costs of arbitration, plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Code.

(v) During the pendency of a dispute resolution, Company shall proceed to pay Annual Base Salary and Annual Bonus (referred to collectively as "CONTINUATION BENEFITS") to the Executive and/or the Executive's family or other beneficiaries, as the case may be, as though no such termination had occurred.

(A) If it is determined that the Executive's contention that Section 6(a), (b) or (c) was applicable, no portion of the Continuation Benefits will be recoverable by Company, nor shall any portion of such be credited towards the benefits due (per Section 6) to the Executive. If such a contention is not sustained by the arbitration panel, all Continuation Benefits are recoverable by Company, plus interest at the rate of interest that Company could have earned on amounts paid for such Continuation Benefits.

Executive Retention Agreement

Page 12

(B) If it is determined that Company's contention that Section 6(d) was applicable is found to be incorrect, none of the Continuation Benefits shall be credited to the benefits due (per Section 6) to the Executive. If, however, Company's contention that Section 6(d) was applicable is found to be correct, all amounts paid by Company as Continuation Benefits shall be recoverable from Executive plus interest at the rate of interest that Company could have earned on the amounts paid for such Continuation Benefits.

(C) If the Executive does not make payment of the Continuation Benefits and accrued interest due to Company within 60 days following the resolution of the dispute for any amounts recoverable by Company, interest (on the total amount due) shall be due at the lesser of:

(1) The rate published as the Prime Rate in the

Wall Street Journal plus one percentage point on the date of receipt of the Notice of Termination; or

- (2) The maximum amount of interest allowed by law.

(D) If the Company does not pay any amount due to the Executive hereunder within the time provided, then in addition to such amount, Company shall pay Executive an amount of interest (on the total amount due) at the lesser of:

- (1) The rate published as the Prime Rate in the Wall Street Journal plus one percentage point on the date such payment is due; or
- (2) The maximum amount of interest allowed by law.

9. Limitation on Termination Payment.

(a) Determination of Termination Payment Limit.

Notwithstanding any other provision of this Agreement, if any portion of the Severance Amount or any other payment under this Agreement, or under any other agreement with or plan of the Company (in the aggregate "TOTAL PAYMENTS") would constitute an Excess Parachute Payment, then the payments to be made to the Executive under this Agreement shall be reduced such that the value of the aggregate Total Payments that the Executive is entitled to receive shall be one dollar (\$1) less than the maximum amount which the Executive may receive without becoming subject to the tax imposed by Section 4999 of the Code, or which the Company may pay without loss of deduction under Section 280G(a) of the Code. However, the payments to be made to the Executive under this Agreement shall be reduced if and only if so reducing the payments results in the Executive receiving a greater net Severance Amount than he would have received had a reduction not occurred and an excise tax been paid pursuant to Code Section 4999. For purposes of this Agreement, the terms "EXCESS PARACHUTE PAYMENT" and "PARACHUTE PAYMENTS" shall have the meanings assigned to them in Section 280G of the Code, and such Parachute Payments shall be valued as provided therein.

(b) Procedure for Establishing Limitation on Termination Payment. Within sixty (60) days following delivery of the Notice of Termination or notice by the Company to the Executive of its belief that there is a payment or benefit due the Executive which will result in an "Excess Parachute Payment", the Executive and the Company, at the Company's expense, shall obtain the opinion of such legal counsel, which need not be unqualified, as the Executive may choose, which sets forth: (i) the amount of the Executive's "Annualized Includible Compensation For The Base Period" (as defined in Code Section 280G(d)(1)); (ii) the present value of the Total Payments; and (iii) the amount and present value of any Excess Parachute Payment. The opinion of such legal counsel may be supported by the opinion of a certified public accounting firm and, if necessary, a firm of recognized executive compensation consultants. Such opinion shall be binding upon the Company and the Executive. In the event that such opinion determines that there would be an Excess Parachute Payment, the Severance Amount hereunder or any other payment determined by such counsel to be includible in Total Payments shall be reduced or eliminated so that under the basis of calculations set forth in such opinion, there will be no Excess Parachute Payment. The provisions of this Section 9(b), including the calculations, notices, and opinion provided for herein shall be based upon the conclusive presumption that: (i) the compensation and benefits provided for herein; and (ii) any other compensation earned prior to the Effective Date of termination by the Executive pursuant to the Company's compensation programs (if such payments would have been made in the future in any event, even though the timing of such payment is triggered by the Change-of-Control), are reasonable.

(c) Subsequent Imposition of Excise Tax. If, notwithstanding compliance with the provisions of Sections 9(a), and 9(b) herein, it is ultimately determined by a court or pursuant to a final determination by the Internal Revenue Service that any portion of the Total Payments is considered to be a Parachute Payment, subject to excise tax under Section 4999 of the Code, which was not contemplated to be a Parachute Payment at the time of payment (so as to accurately determine whether a limitation benefit to the Executive, as

provided in Section 9(b) hereof), the Executive shall be entitled to receive a lump sum cash payment sufficient to place the Executive in the same net after-tax position, computed by using the Special Tax Rate (as such term is defined below), that the Executive would have been in had such payment not been subject to such excise tax, and had the Executive not incurred any interest charges or penalties with respect to the imposition of such excise tax. For purposes of this Agreement, the "SPECIAL TAX RATE" shall be the highest effective federal and state marginal tax rates applicable to the Executive in the year in which the payment contemplated under this Section 9 is made.

10. Confidential Information. The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or have become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

11. Successors.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "COMPANY" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid that assumes and agrees to perform this Agreement by operation of law, or otherwise.

(d) Failure of the Company to obtain such assumption and agreement prior to the effective date of any such succession shall be a breach of this Agreement and shall entitle the Executive to compensation from the Company in the same amount and on the same terms as the Executive would be entitled to hereunder if he had terminated his employment with the Company voluntarily for Good Reason. For the purpose of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

12. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as

follows:

If to the Executive:

W. C. Hammett, Jr.
17130 Freshwater Lane
Cornelius, North Carolina 28031

If to the Company:

Dave & Buster's, Inc.
2481 Manana Drive
Dallas, Texas 75220
Attention: General Counsel

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state or local taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Section 5(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company prior to the Effective Date is "at will" and may be terminated by either the Executive of the Company at any time. If prior to the Effective Date, the Executive's employment with the Company terminates, the Executive shall have no further rights and obligations under this Agreement.

Executive Retention Agreement

Page 16

(g) No provision of this Agreement may be modified, waived, or discharged unless such modification, waiver, or discharge is agreed to in writing and signed by the Executive and by an authorized member of the Committee, or by the respective parties' legal representatives and successors.

(h) The Company and Wachovia Bank of North Carolina, N.A., as Trustee have previously executed the Dave & Buster's, Inc. Executive Retention Agreement Trust dated April 3, 2000. The Company covenants with Executive to: (i) identify Executive as a Plan Participant thereunder by amending Attachment 1 thereto; and (ii) make all payments required of the Company pursuant to such agreement.

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Committee, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ W.C. Hammett, Jr.

W. C. Hammett, Jr.

Dave & Buster's, Inc.

By: David O. Corriveau

Its: President

SUBSIDIARIES OF THE COMPANY

1. Dave & Buster's of Illinois, Inc., an Illinois corporation
2. Dave & Buster's of Georgia, Inc., a Georgia corporation
3. Dave & Buster's of Pennsylvania, Inc., a Pennsylvania corporation
4. DANB Texas, Inc., a Texas corporation
5. Dave & Buster's of Maryland, Inc., a Maryland corporation
6. Dave & Buster's of California, Inc., a California corporation
7. Dave & Buster's of Colorado, Inc., a Colorado corporation
8. Dave & Buster's of New York, Inc., a New York corporation
9. Dave & Buster's of Florida, Inc., a Florida corporation
10. Dave & Buster's of Pittsburgh, Inc., a Pennsylvania corporation
11. Dave & Buster's of Hawaii, Inc., a Hawaii corporation

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-80537 and 333-88183) pertaining to Dave & Buster's, Inc. 1995 Stock Option Plan and Employee 401(k) Savings Plan of our report, dated March 21, 2002, with respect to the consolidated financial statements of Dave & Buster's, Inc. included in this Annual Report (Form 10-K) for the year ended February 3, 2002.

/s/ ERNST & YOUNG LLP

Dallas, Texas
April 18, 2002